ABORIGINAL JUSTICE IMPLEMENTATION COMMISSION

FINAL REPORT
AND
RECOMMENDATIONS

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ABORIGINAL
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June 29, 2001

Honourable Gord Mackintosh
Minister of Justice and
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104 Legislative Bldg.
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Honourable Eric Robinson
Minister of Aboriginal and
Northern Affairs
344 Legislative Bldg.
Winnipeg, MB R3C 0V8

Dear Minister Mackintosh and Minister Robinson:

We have the honour to submit to you, pursuant to Order in Council number 459/1999 dated November 24, 1999, the final report of the Aboriginal Justice Implementation Commission

Respectfully submitted,

Paul L. A. H. Chartrand
Commissioner

Wendy J. Whitecloud
Commissioner

encl.

cc. Bruce MacFarlane, Q.C.
Oliver Boulette

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Executive Summary

Aboriginal Justice Implementation Commission

In November 1999 the Manitoba government appointed the Aboriginal Justice Implementation Commission (AJIC). This Commission was charged with reviewing those recommendations made in the 1991 *Report of the Aboriginal Justice Inquiry of Manitoba* for which the Province of Manitoba is responsible and accountable, and with proposing methods of implementing appropriate Aboriginal Justice Inquiry (AJI) recommendations. The AJIC was instructed to complete this work by March 31, 2001, a deadline that was later extended to June 30, 2001.

The Work of the AJIC

Mandate

The AJIC was mandated to address only those AJI recommendations that touch upon areas for which the Manitoba government is responsible and accountable. The AJIC was also instructed to have regard to the Framework Agreement entered into between Canada and First Nations, and to the reports of the Royal Commission on Aboriginal Peoples (RCAP). The 1994 Framework Agreement, between the Assembly of Manitoba Chiefs and the Minister of Indian Affairs, undertakes to dismantle the operations of the Department of Indian Affairs in Manitoba.

The AJI, however, recommended action not only by the Province, but also by the federal government and by Aboriginal governments, including many joint initiatives between these parties.

Review

Following the appointment of the AJIC, the Minister of Justice and the Minister of Aboriginal and Northern Affairs requested all government departments to provide the AJIC with reports on the status of implementation of the AJI recommendations that pertain to their departments. It is these recommendations that are, in large measure, under review in this report. The AJIC reviewed those reports and met with members of the appropriate government departments.

Communication and Consultation

The Aboriginal Justice Implementation Commission was mandated to communicate and consult with Manitobans on priority areas for action and on implementation strategies. Given the fact that the Aboriginal Justice Inquiry held extensive public hearings, such hearings were not considered to be required for the AJIC to fulfill its mandate, nor were they authorized.

The AJIC also circulated proposed recommendations to organizations that would be affected by these recommendations. In a number of cases, recommendations have already been adopted and implemented by the government. The AJIC also posted the recommendations and the policy initiatives on its web page.

Priorities

The Commission's mandate stresses the need to set priorities for short-term and long-term action, and to make proposals that are cost-effective and attainable. At the same time, they must reflect the Aboriginal Justice Inquiry's support for a justice system that is flexible and can be administered at the local level. The Commission, through its consultation with Aboriginal people, government officials, and outside experts, and through its own research, has concluded that the resolution to the overrepresentation of Aboriginal people in the justice system will come, over the long term, from within and outside the justice system. Indeed, many of the people and organizations the Commission consulted stressed the need to ensure that reform is not limited to the justice system. People repeatedly pointed to the effects on the family of poverty, ill health, and marginalization.

Based on these views, raised by virtually every group the AJIC consulted with, the Commissioners established the following priority areas for their work:

- Aboriginal rights
- Northern Flood Agreement
- treaty land entitlement
- Métis issues
- employment and cross-cultural training
- policing

- community justice
- violence towards women and children
- child welfare
- early support and crime prevention measures for youth

Three themes emerge from these priorities:

- Aboriginal rights
- reform of the justice system
- the need for preventive measures

Based on these themes, this report is organized into five sections: an Introduction, a section on Aboriginal Rights and Aboriginal Relations, a section on Community and Restorative Justice, a section on Crime Prevention through Community Development, and Concluding Thoughts. The relevant AJI recommendations are addressed using criteria developed by the Commission. The following briefly describes the priorities that will be applied in each section.

Aboriginal Rights and Aboriginal Relations

This Commission will give priority to measures that:

- fulfill land entitlement obligations
- fulfill Northern Flood Agreement obligations
- fulfill obligations to Métis people
- approach Aboriginal issues in a manner that leads to a recognition and fulfillment of Aboriginal rights, and to reconciliation between Aboriginal people and other Canadians
- improve the justice system while assisting Aboriginal people and communities to undertake measures that can lead to the implementation of their constitutional and other legal rights

Community and Restorative Justice

The Aboriginal Justice Implementation Commission has concluded that in order to reduce the number of Aboriginal people involved with the justice system:

- greater participation by Aboriginal people and Aboriginal communities is required at all stages in the justice system,
- justice system personnel need to understand better the impact of normal system practices on Aboriginal people,
- steps must be taken to improve the economic and social conditions of Aboriginal people, and
- children, youth, and the family should be a particular focus of services and programs.

The first two beliefs animate the recommendations in Section Three, Community and Restorative Justice, while the second two beliefs underpin the approach that the Commission recommends in Section Four, Crime Prevention through Community Development. Based on these goals, the recommendations of the AJI, and consultations and research, this Commission will give priority to measures that:

- reduce the use of incarceration and encourage correctional program service delivery in communities
- use alternative or conditional sentences for as many offenders as possible
- encourage support and confidence in the system, through more Aboriginal-controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels, and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training
- provide adequately resourced treatment programs for offenders and others
- provide community policing rooted in genuine partnership among police officers, police departments, governments, and the community
- assist more community involvement, where communities want and have the capacity to assume and maintain justice roles, and provide adequate resources for these communities to discharge their duties

Crime Prevention through Community Development

The changes outlined in the section on the Community and Restorative Justice are necessary to improve the legitimacy, credibility, effectiveness, and, finally, the justness, of our justice system. On their own, they are not sufficient to bring about the needed reduction in the Aboriginal crime rate.

The young people in Manitoba's Aboriginal communities are at risk. The choices facing the people of Manitoba are stark: invest today in programs to strengthen families, young people, and communities; or make future investments in jails and courthouses.

Based on its goals, the recommendations of the AJI, and consultations and research, this Commission gives priority to measures that:

- strengthen families
- create conditions that lessen the likelihood of young people being engaged in criminal and other anti-social behaviour
- strengthen schools, including by reducing truancy and school exclusion, and by creating family and school partnerships
- strengthen communities socially, economically, and culturally

Concluding Thoughts

In its concluding section, this report addresses a number of issues that flow from its mandate. The final chapter of the report discusses proposals for a successor institution to the Aboriginal Justice Implementation Commission. Such an institution, styled the Aboriginal Justice Commission, was recommended in the original Aboriginal Justice Inquiry report. The fact that limited progress was made in implementing the AJI recommendations in the decade following its release, when compared with the progress that has been made during the lifetime of the AJIC, would appear to demonstrate considerable merit in the establishment of a continuing Aboriginal Justice Commission. This report also recommends the establishment of a Roundtable on Aboriginal Issues.

Chapter One

The Aboriginal Justice Inquiry: Background and Key Issues

> Canada's treatment of its first citizens has been an international disgrace. To fail to take every needed step to redress this lingering injustice will continue to bring tragedy and suffering to Aboriginal people, and to blacken our country's name throughout the world. By acting now, governments can give positive expression to the public support and good will we have encountered from Manitobans during the past three years.
>
> — The concluding words of the 1991 *Report of the Aboriginal Justice Inquiry*

In November 1999 the Manitoba government appointed the Aboriginal Justice Implementation Commission. This Commission was charged with reviewing those recommendations made in the 1991 *Report of the Aboriginal Justice Inquiry* for which the Province of Manitoba is responsible and accountable, and with proposing methods of implementing appropriate AJI recommendations. The AJIC was instructed to complete this work by March 31, 2001, a deadline that was later extended to June 30, 2001. (The full mandate of the AJIC is printed as Appendix II of this report.) Before describing the work of the Aboriginal Justice Implementation Commission and the principles that underlie its approach, it is necessary to summarize briefly the history and work of the Aboriginal Justice Inquiry.

The Aboriginal Justice Inquiry

The Aboriginal Justice Inquiry was established in 1988 in response to two specific incidents: the 1987 trial of two men for the 1971 murder of Helen Betty Osborne, and the 1988 shooting death of J.J. Harper following an encounter with a Winnipeg police officer. These two events raised serious questions as to whether the justice system was failing Aboriginal people.

The AJI was mandated to:

> Investigate, report and make recommendations to the Minister of Justice on the relationship between the administration of justice and aboriginal peoples

> of Manitoba, guided by but not limited to the terms of reference set out in the Schedule. (AJI, Volume I, page 3)

That Schedule established a very broad scope for the Inquiry that included "all components of the justice system, that is, policing, courts, and correctional services." (AJI, Volume I, page 3)

The Commission was to

> consider whether and the extent to which aboriginal and non-aboriginal persons are treated differently by the justice system and whether there are specific adverse effects, including possible systemic discrimination against aboriginal people, in the justice system. The commission is to consider the manner in which the justice system now operates and whether there are alternative methods of dealing with aboriginal persons involved with the law. (AJI, Volume I, page 3)

The AJI held over 123 days of hearings, received over 1200 presentations and exhibits, travelled more than 18,000 kilometres, and generated 21,000 pages of transcripts. Its final report, released in 1991, filled two volumes and contained 296 recommendations.

These recommendations can be roughly divided into those that address questions of Aboriginal rights, and those directed at reforms to existing institutions of the contemporary justice system. The Inquiry's major initiative in the area of Aboriginal rights was the recommendation to establish an Aboriginal justice system based on rights of self-government.

In their report, the Commissioners stated that without the creation of an Aboriginal justice system, "problems of inequality and injustice will continue to plague our justice system." (AJI, Volume I, page 339) The proposed reforms to the existing system were numerous, but their overall thrust was to reduce incarceration, increase Aboriginal involvement in the operation of the justice system, and reduce cultural barriers. The AJI Commissioners stated they were recommending these changes to the existing system because:

- many Aboriginal people would live in communities that would not be under the jurisdiction of the proposed justice systems; and
- they believed that many of these reforms would serve as transitional steps to the creation of Aboriginal justice systems.

Implementing the Recommendations of the AJI

The recommendations of the AJI were directed at federal, provincial, municipal, and Aboriginal governments, and other institutions such as police departments, schools, and universities. Following its release, there was no coordinated effort to implement the *Report*'s recommendations. This remained the case until the appointment of the AJIC in the fall of 1999.

The Work of the AJIC

Mandate

Before discussing the work of the AJIC, it is appropriate to emphasize the scope of the Commission's mandate. The AJIC is mandated to address only those AJI recommendations that touch upon areas for which the Manitoba government is responsible and accountable. The AJIC was also instructed to have regard to the Framework Agreement entered into between Canada and First Nations, and to the reports of the Royal Commission on Aboriginal Peoples (RCAP). The 1994 Framework Agreement, between the Assembly of Manitoba Chiefs and the Minister of Indian Affairs, undertakes to dismantle the operations of the Department of Indian Affairs in Manitoba.

The AJI, however, recommended action not only by the Province, but also by the federal government and by Aboriginal governments, including many joint initiatives between these parties. It must be emphasized, then, that in order to support the principles set out by the AJI and to implement recommendations in light of the Framework Agreement and the reports of the Royal Commission on Aboriginal Peoples, it is necessary that the Province undertake action jointly with the federal government and with Aboriginal people's representatives.

Review

Following the appointment of the AJIC, the Minister of Justice and the Minister of Aboriginal and Northern Affairs requested all government departments to provide the AJIC with reports on the status of implementation of the AJI recommendations that pertain to their departments. It is these recommendations that are, in large measure, under review in this report. The AJIC reviewed those reports and met with members of the appropriate government departments.

Communication and Consultation

The Aboriginal Justice Implementation Commission was mandated to communicate and consult with Manitobans on priority areas for action and on implementation strategies. Given the fact that the Aboriginal Justice Inquiry held extensive public hearings, such hearings were not considered to be required for the AJIC to fulfill its mandate, nor were they authorized.

The AJIC has fulfilled its responsibility to consult and communicate by:

- issuing quarterly reports that were posted on the AJIC web page
- meeting with government officials, representatives of Aboriginal organizations, police and corrections officials, and community members (One of the results of the initial round of consultations was the establishment of a set of priorities for the AJIC, discussed later in this chapter.)
- commissioning a series of consultation papers, which were circulated to various interested organizations and posted on the web page
- sending a letter to each member of the Legislative Assembly, asking for input
- undertaking a survey of Aboriginal leadership

The AJIC also circulated proposed recommendations to organizations that would be affected by these recommendations. In a number of cases, recommendations have already been adopted and implemented by the government. The AJIC also posted the recommendations and the policy initiatives on its web page.

In addition to these activities, the AJIC has established a set of goals and priorities for implementing the AJI's recommendations. Those goals and priorities are best viewed in light of a discussion of the circumstances of Aboriginal people in Manitoba.

Aboriginal Peoples in Manitoba

Definitions

The Aboriginal Justice Inquiry operated on the basis of the following definition of Aboriginal people:

> For our purposes, when we refer to Indians, we will be talking about the Aboriginal people who are entitled to be registered as Indians pursuant to the Indian Act of Canada. (S.C 1985 c. 1-6) Métis people are those Aboriginal people of mixed blood, Aboriginal-white ancestry who are, and who consider

> themselves as being, neither Indian nor Inuit, or who regard themselves as Métis. Inuit people are those Aboriginal people who were formerly known as Eskimos.
>
> Status Indians are those people recognized as Indians under the Indian Act and are entitled to be registered as such in the Indian Register maintained by the Department of Indian Affairs in Ottawa. That is why they are referred to sometimes as "registered" Indians.
>
> "Non-status Indian" is a term which has been applied to people of Indian ancestry who are not, for one reason or another, registered under the Indian Act. (AJI, Volume I, page 7)

There are a number of distinct nations or tribal groupings of Aboriginal people in Manitoba. The Aboriginal people of Manitoba are the Dene in the northernmost parts of the province, the Cree in the north (with the Swampy Cree in the northwest and Oji-Cree of Island Lake in the northeast), the Ojibway (or Saulteaux) in the central and eastern regions, and the Dakota in the south and western regions, and the Métis throughout the province.

Population Data

The AJI acknowledged that there was uncertainty about the number of Aboriginal people in Manitoba. This was due to a number of factors, including a decision by many Aboriginal people to boycott the 1986 census. On the basis of a statistical analysis it commissioned, the AJI concluded that in 1991, the Aboriginal population of Manitoba was 130,000, or 11.8 percent of the Manitoba population. This compares with the 85,000 (or 8.1 percent of the population) estimated in the 1986 census. The AJI further estimated that approximately 36 percent of the Aboriginal population lived in northern Manitoba, 31 percent of the Aboriginal population lived in Winnipeg, and 33 percent lived in southern Manitoba, outside the City of Winnipeg. (AJI, Volume I, pages 7-8)

According to the 1996 Canadian census, there were 128,685 Aboriginal Manitobans, or 11.7 percent of the provincial population. According to the census figures, the Aboriginal population in the province has grown by 51 percent since the 1986 census. It is also thought that the 1996 census figures continue to understate the number of Aboriginal people living in Manitoba. Manitoba has the highest percentage of Aboriginal people of any Canadian province and the highest percentage of urban Aboriginal people living in it. Studies examined by the AJIC indicate that there are approximately 80,620 First Nations people, 45,365 Métis people, 245 Inuit, and 2455 other Aboriginal people (non-status Indians) living in Manitoba (Mendelson, *Chart 2:* No page number).

Socio-economic status

The Aboriginal Justice Inquiry report concluded that Aboriginal people face "greater socio-economic problems than does any other segment of Canadian society." (AJI, Volume I, page 9) Compared to the Manitoba population as a whole, Aboriginal people lived shorter lives, received less education, made less money, lived in more crowded and inadequate housing conditions, and experienced more health problems. In addition to, and in large measure as a result of, these conditions, Aboriginal people were also overrepresented in the justice system. In 1989, 40 percent of the inmates at the Stony Mountain Penitentiary were Aboriginal. In that year, 47 percent of the population at the Headingley Correctional Centre were Aboriginal, while 55 percent of the province's jail population were Aboriginal. Also in that year, 67 percent of the admissions to the Portage la Prairie jail for women were Aboriginal. On October 1, 1990, 64 percent of the Manitoba Youth Centre's population and 78 percent of the Agassiz Youth Centre's population were Aboriginal. The AJI Commissioners worried that, given the fact that in 1989-90, 32 percent of the children in care in Manitoba were registered Indians, the future would be worse. (AJI, Volume I, pages 9-11)

These fears were only too well-founded. The 1996 census showed that, compared to the Manitoba population as a whole, Aboriginal people had lower labour-force participation rates, over twice the unemployment rate, lower education levels, and more frequent changes in dwellings. According to the Royal Commission on Aboriginal Peoples, Aboriginal people in general have poorer housing than non-Aboriginal people. As the following charts indicate, the percentage of Aboriginal people in custody and on probation has increased over the past decade.

Aboriginal people in Provincial Custody on September 6, 2000 (Sentenced and Unsentenced)

Adult:	Male:	63.4%	731 of 1153
	Female:	73.2%	41 of 56
Youth:	Male:	77.3%	201 of 260
	Female:	89.2%	33 of 37

Aboriginal people on Probation on September 6, 2000

Adult:	Male:	41.5%	2345 of 5652
	Female:	53.5%	514 of 961
Youth:	Male:	47.2%	702 of 1488
	Female:	60.9%	270 of 444

Manitoba Corrections (One-day snapshot)

As these statistics make clear, Aboriginal people form a far larger percentage of the inmate and probation population than they do of the general population of Manitoba.

This progressively worsening problem of overrepresentation has been debated for over 30 years. Task forces and inquiries in Manitoba, Alberta, and Saskatchewan have examined this issue, as did the Royal Commission on Aboriginal Peoples and the Law Reform Commission of Canada. All these reports noted that the problem would not be solved in the justice system alone. Longlasting solutions require addressing the circumstances of material disadvantage facing Aboriginal people, compared to the rest of the population.

This Commission was established to recommend strategies to implement those AJI recommendations in areas of provincial responsibility. However, the Commissioners are mindful of the tremendous loss and injustice that is represented by Aboriginal overrepresentation in our jails, and is, in large measure, the result of the marginalization of Aboriginal people in our society. This knowledge, along with the input we have received from fellow Manitobans, has shaped our goals and recommendations. For this reason, this report contains recommendations that seek to address the underlying causes of Aboriginal overrepresentation.

Priorities

The Commission's mandate stresses the need to set priorities for short-term and long-term action, and to make proposals that are cost-effective and attainable. At the same time, they must reflect the Aboriginal Justice Inquiry's support for a justice system that is flexible and can be administered at the local level. The Commission, through its consultation with Aboriginal people, government officials, and outside experts, and through its own research, has concluded that the resolution to the overrepresentation of Aboriginal people in the justice system will come, over the long term, from within and outside the justice system. Indeed, many of the people and organizations the Commission consulted stressed the need to ensure that reform is not limited to the justice system. People repeatedly pointed to the effects on the family of poverty, ill health, and marginalization.

Based on these views, raised by virtually every group the AJIC consulted with, the Commissioners established the following priority areas for their work:

- Aboriginal rights
- Northern Flood Agreement
- treaty land entitlement

- Métis issues
- employment and cross-cultural training
- policing
- community justice
- violence towards women and children
- child welfare
- early support and crime prevention measures for youth

Three themes emerge from these priorities:

- Aboriginal rights
- reform of the justice system
- the need for preventive measures

These also reflect the themes of the original Aboriginal Justice Inquiry report. Based on these themes, this report is organized into five sections: an Introduction, a section on Aboriginal Rights and Aboriginal Relations, a section on Community and Restorative Justice, a section on Crime Prevention through Community Development, and Concluding Thoughts. The relevant AJI recommendations are addressed using criteria developed by the Commission. The following briefly describes the priorities that will be applied in each section.

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- fulfill Northern Flood Agreement obligations
- fulfill obligations to Métis people
- approach Aboriginal issues in a manner that leads to a recognition and fulfillment of Aboriginal rights, and to reconciliation between Aboriginal people and other Canadians
- improve the justice system, while assisting Aboriginal people and communities to undertake measures that can lead to the implementation of their constitutional and other legal rights

Community and Restorative Justice

The Aboriginal Justice Implementation Commission has concluded that in order to reduce the number of Aboriginal people involved with the justice system:

- greater participation by Aboriginal people and Aboriginal communities is required at all stages in the justice system
- justice system personnel need to understand better the impact of normal system practices on Aboriginal people
- steps must be taken to improve the economic and social conditions of Aboriginal people
- children, youth, and the family should be a particular focus of services and programs

The first two beliefs animate the recommendations in Section Three, Community and Restorative Justice, while the second two beliefs underpin the approach the Commission recommends in Section Four, Crime Prevention through Community Development. Based on these goals, the recommendations of the AJI, and consultations and research, this Commission will give priority to measures that:

- reduce the use of incarceration and encourage correctional program service delivery in communities
- use alternative or conditional sentences for as many offenders as possible
- encourage support and confidence in the system, through more Aboriginal-controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels, and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training
- provide adequately resourced treatment programs for offenders and others
- provide community policing rooted in genuine partnership among police officers, police departments, governments, and the community
- assist more community involvement, where communities want and have the capacity to assume and maintain justice roles, and provide adequate resources for these communities to discharge their duties

Crime Prevention through Community Development

From our review of the information available to us, including the nature of the crimes committed by Aboriginal people, and after hearing the hundreds of submissions presented to us in the course of our hearings, we believe that the relatively higher rates of crime among Aboriginal people are a result of the

> despair, dependency, anger, frustration and sense of injustice prevalent in Aboriginal communities, stemming from the cultural and community breakdown that has occurred over the past century. (AJI, Volume I, page 91)

The changes outlined in the section on Community and Restorative Justice are necessary to improve the legitimacy, credibility, effectiveness, and, finally, the justness, of our justice system. On their own, they are not sufficient to bring about the needed reduction in the Aboriginal crime rate.

The young people in Manitoba's Aboriginal communities are at risk. The choices facing the people of Manitoba are stark: invest today in programs to strengthen families, young people, and communities; or make future investments in jails and courthouses.

Based on its goals, the recommendations of the AJI, and consultations and research, this Commission gives priority to measures that:

- strengthen families
- create conditions that lessen the likelihood of young people being engaged in criminal and other antisocial behaviour
- strengthen schools, including by reducing truancy and school exclusion, and by creating family and school partnerships
- strengthen communities socially, economically, and culturally

Concluding Thoughts

In its concluding section, this report addresses a number of issues that flow from its mandate. The final chapter of the report discusses proposals for a successor institution to the Aboriginal Justice Implementation Commission. Such an institution, styled the Aboriginal Justice Commission, was recommended in the original Aboriginal Justice Inquiry report. The fact that limited progress was made in implementing the AJI recommendations in the decade following its release, when compared with the progress that has been made during the lifetime of the AJIC, would appear to demonstrate considerable merit in the establishment of a continuing Aboriginal Justice Commission. This report also recommends the establishment of a Roundtable on Aboriginal Issues.

Introduction to Section Two

Aboriginal Rights and Aboriginal Relations

The *Report of the Aboriginal Justice Inquiry* contains both a detailed examination of the experience of Aboriginal people with the Canadian criminal justice system, and a broader discussion of the relations between Aboriginal and non-Aboriginal people in Manitoba and Canada. Its examination of the rights of Aboriginal people, both in treaty and common law, and its review of the historical experience of Aboriginal people with the Canadian justice system, led the AJI to recommend the establishment of an Aboriginal justice system and the recognition and fulfillment of unmet treaty and Aboriginal rights. The following three chapters of this report deal with the AJI recommendations in this area. The AJIC gives priority to measures that:

- fulfill land-entitlement obligations
- fulfill Northern Flood Agreement Obligations
- fulfill obligations to Métis people
- approach Aboriginal issues in a manner that leads to a recognition and fulfillment of Aboriginal rights, and to reconciliation between Aboriginal people and other Canadians
- improve the justice system while assisting Aboriginal people and communities to undertake measures that can lead to the implementation of their constitutional and other legal rights

Chapter Two

Recognition and Reconciliation

The Aboriginal Justice Inquiry and the Aboriginal Justice Implementation Commission both focus on the justice system as it operates in Manitoba in relation to Aboriginal people. The majority of recommendations in the AJI report and in this report focus on that system and its operations. These recommendations seek to address the overrepresentation of Aboriginal people as offenders in the criminal justice system, and as victims of crime. Both Commissions were established in response to a public recognition that this overrepresentation constitutes a fundamental injustice. Both reports stress restorative approaches that seek to bring communities that are out of balance back into balance.

There is, however, a societal imbalance that arises from a continuing sense of grievance and injustice among Aboriginal people. The AJI recognized the need for recognition and reconciliation. Their report stated that the frustration, anger, and conflict resulting from weak and inadequate government responses to Aboriginal issues "has cast a dark cloud over the relationship between Aboriginal people and government, not only in Manitoba but throughout Canada. ... rectifying the historic injustices, while extending proper respect and substance to Aboriginal and treaty rights, is vital for the well-being of all Canadians. Clearly, restoring honour to the Crown, while rebuilding Aboriginal communities, is needed." (AJI, Volume I, page 119)

In the same vein, the RCAP urged governments and the Canadian people to undertake "a comprehensive and unflinching assessment of the unstable foundations of the relationship" between Aboriginal people and other Canadians, arguing that "we can no longer afford merely to 'manage' the continuing crisis in the relationship by mediating potential areas of conflict while leaving unaltered the foundation on which that conflict inevitably arises." (RCAP, Volume I, page 603) To establish the proper balance, the RCAP proposed four principles in its vision of a new relationship: mutual recognition, mutual respect, sharing, and mutual responsibility. (RCAP, Volume I, page 677)

In present circumstances, the AJIC has attempted to contribute to the dialogue on recognition and reconciliation by providing the Government of Manitoba with a series of options identified in a discussion paper posted on the AJIC website. *Recognition, Reconciliation and Healing,* by John Giokas, discusses the uses to which the term "recognition" has been put in constitutional, legal, and public policy statements in Canada in recent years, and then outlines a series of approaches a government could take to these issues.

The final part of the paper applies the meanings associated with "recognition" through contemporary examples drawn from international and domestic recognition and reconciliation actions and statements. Eight illustrative ways in which the Manitoba government might recognize the Aboriginal people in Manitoba, and their past and present contributions to Manitoba, are discussed. The paper notes that recognition acts or statements by a government may accomplish a variety of purposes with differing legal implications, depending on the purpose for the act or statement.

These eight potential means of affording recognition to Aboriginal people in Manitoba are:

- government announcement of publicly funded historical projects to focus on the past and present contributions of Aboriginal people to Manitoba
- meetings between government and Aboriginal people to discuss possible courses of action to heal the relationship, reconcile opposing views of history, etc.
- announcement of government-sponsored, reconciliation-type actions, and invitation to Aboriginal people to participate
- government statement in the Manitoba Legislature
- government resolution in the Manitoba Legislature
- cabinet-approved statement of Manitoba government policy
- protocol with Aboriginal organizations
- legislation, either substantive or procedural

Part of the premise for the preparation of this paper was that before Aboriginal and non-Aboriginal people can move forward to live in harmony, relations must be reconciled and healed. Some form of recognition of the historical relations between Aboriginal and non-Aboriginal people, it was thought, might contribute to this reconciling and healing.

None of this can be done without the participation of Aboriginal people. Attempts to do so are doomed to failure and criticism, as demonstrated by the experiences of the federal government in the release of its *Gathering Strength* policy paper in January 1998, and of the Quebec government. A paper by Paul Joffe, which examines the Quebec initiative, is available on the AJIC website.

The next steps on a path to reconciliation and healing will require improved and constant communication, not only between Aboriginal people and the Manitoba government, but also with the federal government, and perhaps business and other groups. One of the most effective means to achieve this could be through the discussions of a Roundtable on Aboriginal Issues, or through the agency of an Aboriginal Justice Commission. Both concepts are discussed and recommended in the final section of this report.

The Aboriginal Justice Implementation Commission recommends that:

2.1

The Government of Manitoba place the issue of recognition and reconciliation policies and actions on the agenda of a new Roundtable on Aboriginal Issues, Aboriginal Justice Commission, or such other implementation institution that may be agreed upon between the Province and representatives of the Aboriginal peoples in Manitoba, including in particular the Assembly of Manitoba Chiefs and the Manitoba Metis Federation.

Aboriginal and Treaty Rights

In Chapter Five of its report, the AJI discussed Aboriginal and treaty rights, and made the following recommendations pertaining to provincial policy and action.

- The provincial government develop a policy that respects the desire of Aboriginal people to retain a role in the management and conservation of their traditional territory.
- The Province of Manitoba recognize the harvesting of wild rice as an Aboriginal right.
- The Province, if it wishes to exercise any influence over the regulation of this resource off-reserves, negotiate co-management agreements with the Aboriginal peoples concerned.
- The Province of Manitoba recognize Aboriginal and treaty rights to harvest timber resources.
- The Province ensure that the exercise of wildlife harvesting rights is not infringed by timber management practices.
- Existing Aboriginal rights to water and beds of waters be recognized by the federal and provincial governments.

- The provincial government pursue the development of co-management agreements with the First Nations and Métis peoples regarding timber resources off-reserve in the Aboriginal people's traditional territory.
- In keeping with provincial fiduciary obligations and to assist in the economic advancement of First Nations, the Province of Manitoba formally renounce its half interest in minerals within Indian reserves.
- First Nations have the right to use and control totally all mines and minerals on reserve lands and to receive 100% of the benefits and income therefrom.
- The Interpretation Acts of Manitoba and Canada be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights.
- The government of Manitoba invite the Assembly of Manitoba Chiefs and the Manitoba Metis Federation to designate representatives to work with senior provincial officials to review all relevant legislation that may conflict with Aboriginal and treaty rights. This review should identify specific areas of conflict and propose concrete solutions and statutory amendments. The Manitoba Aboriginal Justice Commission that we propose should be utilized to assist in this process if any of the parties wish.
- The federal and provincial governments establish a process to review all proposed legislation for its potential effect on the rights of Aboriginal peoples.

The Aboriginal Justice Implementation Commission recommended that:

2.2
The Interpretation Act of Manitoba be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights.

2.3
The Government of Manitoba formally renounce its half interest in minerals within Indian reserves.

The Manitoba government has accepted and implemented both these recommendations. It has also worked with Aboriginal organizations and communities to achieve partial implementation of other recommendations.

Aboriginal Justice Systems

A central recommendation of the AJI was the establishment of an Aboriginal justice system. Specifically the AJI stated that:

> It is wrong, in our view, simply to maintain the status quo on the assumption that eventually Aboriginal people will learn to accept the justice system as it presently exists. It is wrong to assume that if only Aboriginal people would accept the justice system, then there would be no more problems. It is wrong

to assume that changes to the existing system will enable it to provide fully adequate services to Aboriginal people. To think in this manner is to ignore the impact of the past human experience of Aboriginal people. Their self-determination has been denied and suppressed, social disorganization has been the consequence, and they are unable to accept the "white man's solution" any longer.

The reality is that approaches taken by a non-Aboriginal justice system in Aboriginal communities will not address the social needs, development, culture, or the right to self-determination of those communities. A court system that is not seen as an institution that belongs to them, and that is unable to adapt to their indigenous concepts and mechanisms of justice, will not work in Aboriginal communities.

An important principle for change and for bringing about changes in Aboriginal communities is that Aboriginal people must be seen as having control. This principle, we discern, is gaining greater and greater acceptance in Canadian society. (AJI, Volume I, page 264)

As a result, the AJI made the following recommendations.

- The federal and provincial governments recognize the right of Aboriginal people to establish their own justice systems as part of their inherent right to self-government.
- The federal and provincial governments assist Aboriginal people in the establishment of Aboriginal justice systems in their communities in a manner that best conforms to the traditions, cultures and wishes of those communities, and the rights of their people.
- Federal, provincial and Aboriginal First Nations governments commit themselves to the establishment of tribal courts in the near future as a first step toward the establishment of a fully functioning, Aboriginally controlled justice system which includes (but need not necessarily be limited to):
  - A policing service.
  - A prosecution branch.
  - A legal aid system.
  - A court system that includes:
    1. a youth court system;
    2. a family court system;
    3. a criminal court system;
    4. a civil court system;
    5. an appellate court system.
- A probation service including a system of monitoring community service orders.
- A mediation/counselling service.

  - A fine collection and maintenance enforcement system.
  - A community-based correctional system.
  - A parole system.
- The federal and provincial governments begin the process of establishing Aboriginal justice systems by enacting appropriate legislation.
- At the same time as legislation to begin the process of establishing Aboriginal justice systems is enacted, the federal and provincial governments acknowledge, by resolution of their respective legislative bodies, that Aboriginal justice systems must be protected constitutionally from federal and provincial legislative incursions and that such systems will ultimately be recognized as an aspect of the right of Aboriginal people to self-government and will not be dependent solely upon federal or provincial legislation for their existence.
- Aboriginal governments enact their own constitutions setting out, among other things, the principle of the separation of the judicial from the executive and legislative arms of each Aboriginal government so as to protect Aboriginal justice systems from interference and to provide security for their independence.

As is apparent, the AJI recognized that this issue would require consultation between the federal and provincial governments and Aboriginal people, and legislative action by both governments of Manitoba and Canada. This Commission recognizes that the issue of Aboriginal justice systems must be placed on the agenda of the Aboriginal Justice Commission or such other institution as may be set up to implement the recommendations of the AJI. (Such bodies are discussed in the final chapter of this report.)

The rest of this chapter briefly identifies the arguments and views of the AJI, the RCAP, the Manitoba Framework Agreement, and the Supreme Court of Canada on Aboriginal justice systems.

The AJI arguments

The Commission proposed a range of possible legal bases for establishing an Aboriginal justice system (AJI, Volume I, page 311), and concluded that the approach that appeared to provide "the greatest potential for the successful establishment of Aboriginal justice systems for both (sic) First Nations, Métis and Inuit peoples" was one that

> involves a process of trilateral negotiations, leading to an agreement that contains within it an express provision that the right to establish and maintain Aboriginal justice systems is an "existing treaty or Aboriginal right" within the meaning of section 35 of the Constitution Act 1982. (AJI, Volume I, page 313)

(See pages 151-161 of Volume I of the Aboriginal Justice Inquiry report for the discussion on section 35 and the relevant law of the Constitution.)

Royal Commission on Aboriginal Peoples (RCAP)

The RCAP devoted a special report to the subject of Aboriginal people and criminal justice in Canada. In *Bridging the Cultural Divide*, the RCAP recommended that;

> federal, provincial and territorial governments recognize the right of Aboriginal nations to establish and administer their own systems of justice pursuant to their inherent right of self-government, including the power to make laws, within the Aboriginal nation's territory. (Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide*, page 224)

The report contained a range of specific recommendations on the establishment Aboriginal justice systems.

The explanation for the RCAP's recommendation to establish Aboriginal justice systems was that "at the core of a new relationship between Aboriginal and non-Aboriginal people must be the recognition of Aboriginal peoples' right of self-government. It is our conclusion that this right must encompass the authority to establish Aboriginal justice systems." (Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide*, page 54)

The RCAP report then reviewed various opinions and reports, including that of the AJI, which had drawn the same conclusion. (Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide*, pages 54-56) In its final report, RCAP presented a detailed argument on the common law right of Aboriginal self-government, which is protected by the Constitution of Canada (RCAP, Volume II, pages 184-244).

Manitoba Framework Agreement, 1994

In the above-mentioned discussion, RCAP noted that "on December 7, 1994, a framework agreement was concluded between First Nations communities in Manitoba, represented by the Assembly of Manitoba Chiefs, and the Queen, represented by the Minister of Indian Affairs. The thrust of the agreement is to dismantle the operations of the Department of Indian Affairs and Northern Development (DIAND) in Manitoba, restore jurisdiction to First Nations peoples, and recognize First Nations governments. The agreement sets out a number of principles to guide this process, including the following:

> 5.2 The inherent right of self-government, First Nations' Treaty rights and Aboriginal rights will form the basis for the relationships which will be developed as a result of the process;
>
> 5.3 In this process, the Treaty rights of First Nations will be given an interpretation, to be agreed upon by Canada and First Nations, in contemporary terms while giving full recognition to their original spirit and intent;
>
> 5.4 First Nations governments in Manitoba and their powers will be consistent with Section 35 of the *Constitution Act 1982.*" (RCAP, Volume II, page 205)

Recognition of Aboriginal Self-Government in Federal Policy, 1995

In 1995, the federal government issued a policy guide entitled *Aboriginal Self-Government,* which sets out the government's approach to implementing the inherent right of self-government:

> The Government of Canada recognizes the inherent right of self-government as an existing right under section 35 of the *Constitution Act 1982*. It recognizes, as well, that the inherent right may find expression in treaties, in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and resources." (*Aboriginal Self-Government*)

The policy guide acknowledges that the inherent right of self-government may be enforceable in the courts. However, it affirms a strong preference for negotiations over litigation as the most practical method to implement the inherent right.

Supreme Court of Canada

In the same vein, the Supreme Court of Canada has emphasized the court's strong endorsement of negotiations over litigation.

The Aboriginal Justice Implementation Commission recommends that:

2.4

The Government of Manitoba place the issue of the establishment of an Aboriginal Justice System on the agenda of the Aboriginal Justice Commission or such other institution as may be set up to implement the recommendations of the Aboriginal Justice Inquiry.

Chapter Three

Métis Issues

The AJI's recommendations were generally framed broadly, and were intended to apply to all Aboriginal people and communities in the province, including Métis people and communities. As an exception to the preceding proposition regarding the inclusive nature of the recommendations, the AJI recommended that a mandated Métis Child and Family Service agency, with jurisdiction over Métis and non-status Indian children throughout Manitoba, be developed in conjunction with the Manitoba Metis Federation (MMF) (AJI, Volume I, page 540).

The AJIC reaffirmed this recommendation, which has been accepted by the Manitoba government. Further discussion of this issue appears in Chapter Ten of this report. However, since most of the AJI recommendations have not been implemented, it follows that the AJI recommendations pertaining to the Métis have, by and large, not been implemented.

The RCAP devoted an entire chapter to Métis issues, and made the following ten major recommendations that involve the federal and provincial governments.

4.5.1

Political negotiation on a nation-to-nation or analogous basis be the primary method of resolving Métis issues.

4.5.2

Every person who

(a) identifies himself or herself as Métis, and

(b) is accepted as such by the nation of Métis people with which that person wishes to be associated, on the basis of criteria and procedures determined by that nation,

be recognized as a member of that nation for purposes of nation-to-nation negotiations and as Métis for that purpose.

4.5.3

The government of Canada either

(a) acknowledge that section 91(24) of the Constitution Act, 1867 applies to Métis people and base its legislation, policies and programs on that recognition; or

(b) collaborate with appropriate provincial governments and with Métis representatives in the formulation and enactment of a constitutional amendment specifying that section 91(24) applies to Métis people.

If it is unwilling to take either of these steps, the government of Canada make a constitutional reference to the Supreme Court of Canada, asking that court to decide whether section 91(24) of the Constitution Act, 1867 applies to Métis people.

4.5.4

The substance of the constitutional amendments relating to the Metis Settlements of Alberta, referred to in section 55 of the Charlottetown Accord and contained in sections 12 and 23 of the Draft Legal Text of 9 October 1992, be enacted as soon as possible by joint action of the Parliament and government of Canada and the legislature and government of Alberta.

4.5.5

When implementing this Commission's recommendations on education affecting Aboriginal persons, great care be exercised to ensure the preservation and propagation of distinct Métis cultures. Measures to achieve that goal might include, where appropriate,

(a) consultation with Métis elders when educational programs are being planned;

(b) establishment of and public funding support of separate Métis schools where numbers warrant;

(c) assisted access to post-secondary education for Métis persons;

(d) creation of a college or faculty of Métis studies and professorships, scholarships and programs of Métis studies; and

(e) provision of residential facilities in post-secondary educational institutions that will be congenial to Métis students.

4.5.6

When implementing the recommendations made in Volume 3, all governments and relevant agencies bear in mind the distinct circumstances of Métis culture and languages.

Governments and private authorities and agencies should collaborate with authorized Métis representatives on measures to preserve, cultivate and study elements of Métis culture, including the following:

(a) Aboriginal languages: to encourage and assist Métis people to learn and use the Aboriginal languages with which their Métis ancestors were historically associated;

(b) Michif language: to implement, with Métis collaboration and public funding, special measures to save Michif from extinction and to encourage and assist Michif research and instruction;

(c) research and publications about Métis history and culture: to provide financial support for research and publications to disseminate information about Métis Nation history and culture by means of print, radio, television, film, theatre and other modes of expression;

(d) historical sites: to establish major Métis cultural history centres at historically significant sites such as Batoche and the Forks in Winnipeg, to be owned and operated by Métis representatives; and

(e) repatriation of artifacts: to repatriate major Métis artifacts from public and private collections to appropriate Métis-run locations.

4.5.7

The governments of Canada and the relevant provinces and territories be prepared to make available, through negotiations with each recognized nation of Métis people, land bases sufficient in number, size, location and quality to permit the fulfilment of the nation's legitimate social, cultural, political and economic aspirations.

4.5.8

The governments of Manitoba, Saskatchewan and Alberta

(a) recognize immediately that the right, under the Constitution Act, 1930, of "Indians" of those provinces to hunt, trap and fish for food in all seasons on unoccupied Crown land and other land to which they have a right of access applies to all Métis persons in those provinces;

(b) consult with leaders of the Métis Nation when determining who qualifies as a Métis person for that purpose;

(c) give the same right to non-status Indians residing in the prairie provinces after they have demonstrated their Aboriginal ancestry by some prescribed and fair method; and

(d) give the same right to Aboriginal persons residing outside the prairie provinces unless it has been extinguished by a legally binding extinguishment measure, and extend the right, where appropriate, to public waters.

4.5.9

Federal, provincial and territorial governments

(a) be prepared to enter into temporary land use agreements with Métis nations while land claims negotiations are pending or continuing; and

(b) be prepared, where appropriate, to consider longer-term land use agreements with Métis nations, perhaps in association with other interests, Aboriginal or private.

4.5.10

The governments of Canada and of relevant provinces and territories

(a) be prepared to negotiate immediately with appropriate Métis representatives (as well as, where appropriate, other Aboriginal governments) on the manner in which Métis self-government will be recognized by and integrated with other governments and assisted to become financially self-sufficient; and

(b) pursue independently and swiftly those aspects of self-government that are not dependent upon land base considerations, although it will be appropriate for part of these negotiations to take place in the context of negotiations concerning the nation's land base.

The Aboriginal Justice Implementation Commission recommends that:

3.1
The Government of Manitoba develop and adopt, with the full participation of the Manitoba Metis Federation, a comprehensive Métis policy on matters within its jurisdiction.

3.2
The Government of Manitoba cooperate with the federal government and other provinces, where appropriate, on the implementation of the Aboriginal Justice Inquiry and the RCAP recommendations.

In order to assist the parties in this respect, the Commission has placed a policy discussion paper that it commissioned, entitled *Toward a Métis Policy*, on its website.

The Commission also draws attention to its comments and recommendations elsewhere in this final report concerning the need for changes to current provincial government institutions in order to better design and implement Aboriginal policies, and to its recommendation that the Province establish an Aboriginal Justice Commission with the structure and functions proposed by the AJI (AJI, Volume I, page 657 ff.).

Early in its mandate, the AJIC consulted with the MMF on the priorities of the Métis people in the province.

These were identified as the following:

- the recognition and protection of the rights of the Métis in the province including:
    - protection of Métis interests from northern hydroelectric developments
    - protection of Métis interests in the Treaty Lands Entitlement process
- policies and actions to establish certainty in the law, pertaining to the nature and scope of Métis rights

- clarification of provincial jurisdiction and responsibility concerning Métis people
- discussions on progress concerning the MMF litigation relating to Métis lands provisions in the Constitution of Manitoba
- increasing Métis participation in the Winnipeg Police force
- discussions on establishing an enumeration and registry of Métis persons in the province
- clarification regarding the Métis commercial fishing industry and Métis hunting rights

In order to give early attention to these priorities, the AJIC, in its first quarterly report, recommended that:

3.3
Representatives of the Province enter forthwith into discussions with the MMF to begin the process of addressing matters within the jurisdiction of Manitoba that have been the subject of recommendations by the AJI and the RCAP.

The AJIC has been informed that the Manitoba government has proposed that the matters referred to in this recommendation be addressed through the current Métis Self-Government Tripartite Process, which includes the Manitoba Metis Federation and the provincial and federal governments.

Chapter Four

Treaty Land Entitlement and the Northern Flood Agreement

When First Nations signed treaties with the federal government certain lands were promised to the First Nations. Those promises were not kept in full. Treaty Land Entitlement (TLE) land is that which is owed to First Nations under the treaties signed with the Government of Canada. The AJI did not find this to be a complicated issue. In fact, it said,

> There should be no controversy today surrounding the issue of treaty land entitlement. In fact, treaty land entitlement should not even be an outstanding issue. It is a subject that is so simple and straightforward that it never should have arisen as a source of conflict in the first place. (AJI, Volume I, page 162)

In 1930, through the Manitoba Natural Resources Transfer Agreement (NRTA), which is incorporated into the Constitution Act 1930, all Crown lands were transferred to Manitoba from Canada, subject to a legal requirement to provide unoccupied lands to Canada to enable it to meet its obligations under treaties with First Nations. The Aboriginal Justice Inquiry made a number of comments with respect to TLE, and, in particular, on the formula to be used to calculate the amount of land owed to First Nations.

The AJI recommended that:

- Current population figures be used for entitlement in conjunction with the formula set out in each treaty to determine the precise amount of land that is owed to each First Nation.
- The government of Manitoba reinstitute a moratorium on the disposal of Crown land in the Province and that no Crown land be made available to third parties by grant or lease until all First Nation land selection has been made or without the consent of the treaty land entitlement bands in the region.
- A Treaty Land Entitlement Commission be created for Manitoba consisting of five members, namely, one provincial nominee, one federal nominee, two nominees from the Assembly of Manitoba Chiefs, and a neutral chairperson selected by the other members of the Commission. This Commission should be empowered to render binding decisions on any disputes that may arise

over:
- i) The exact population of an entitlement band.
- ii) The amount of land originally set aside for the reserve that is to be deducted from the current treaty entitlement.
- iii) The selection of Crown lands to fulfil the entitlement obligation.
- iv) The location of boundaries.
- v) The amount of financial compensation for the delay.

- The Treaty Land Entitlement Commission be created by complementary federal and provincial legislation with the endorsement of the Assembly of Manitoba Chiefs. We further recommend that this legislation be drafted jointly by both governments in conjunction with the treaty land entitlement First Nations.

The Commission was advised that there were currently 31 First Nations with TLE claims in Manitoba. Of these 31 First Nations, 27 claims have been accepted by Canada, and seven First Nations have signed individual TLE settlements. They are:

- The four First Nations in the Island Lake area (Wasagamaak, Garden Hill, St. Theresa Point, and Red Sucker Lake), which signed an agreement on March 14, 1994
- The Long Plains First Nation, which signed an agreement on August 3, 1994
- The Swan Lake First Nation, which signed an agreement in March 1995
- Roseau River First Nation, which signed an agreement in March 1996.

On May 29, 1997, 19 First Nations signed the Manitoba Treaty Land Entitlement Framework Agreement. Under this agreement, 445,754 hectares of land will be transferred to First Nation reserves to make up for the shortfall that occurred at the time the reserves were created. The Province of Manitoba will provide 399,008 hectares of Crown land, and Canada will contribute $76,000,000.00, a portion of which will be applied to the purchase of up to 46,444 hectares of land from private owners for those First Nations who do not have a sufficient amount of Crown land in their vicinity for transfer to a First Nations reserve. All the land obtained from private owners will be purchased on a willing seller/willing buyer basis.

The three parties to the Framework Agreement used the population figures as of October 14, 1993 (the date of signing of the protocol for agreement negotiations), to determine land entitlement. The Commission was advised that land amounts, financial compensation, principles for land selection, and dispute resolution mechanisms are provided for in the three-party Framework Agreement, and that they were the result of negotiations between the TLE Committee representing the 19 First Nations and Canada, and Manitoba.

From discussions with the parties, it appears that the TLE process is now working reasonably well. Further information on the Treaty Land Entitlement process can be found at the TLE Inc. website, www.tle.mb.ca.

The Manitoba Metis Federation raised with the AJIC the issue that lands being selected by First Nations under the TLE process may be subject to Aboriginal rights claims from Métis people. As noted in the previous chapter, the AJIC has recommended that the Manitoba government enter into discussions with the MMF to address matters within provincial jurisdiction of Manitoba that have been the subject of AJI and the RCAP recommendations.

Northern Flood Agreement

The AJI described the Northern Flood Agreement (NFA) in the following terms:

> The Northern Flood Agreement was signed by Canada, Manitoba, Manitoba Hydro and the Northern Flood Committee representing the five First Nations (Nelson House, Norway House, Cross Lake, Split Lake and York Factory) whose reserve lands were to be flooded by the major hydro-electric projects planned. The agreement provided for an exchange of four acres for each acre flooded, the expansion and protection of wildlife harvesting rights, five million dollars to be paid over five years to support economic development projects on the reserves and promises of employment opportunities. The agreement was also to deal with any adverse effects to the "lands, pursuits, activities and lifestyles of reserve residents." The five First Nations were guaranteed a role in future resource development as well as in wildlife management and environmental protection. Certain water level guarantees were made and Manitoba Hydro generally accepted responsibility for any negative consequences that might emanate from the flooding. In return, Hydro obtained the right to flood reserve lands as part of the Churchill Diversion Project. Disputes over any adverse effects were to be settled by arbitration.
>
> Manitoba Hydro obtained what it wanted as it proceeded with this massive project. The reaction from Aboriginal people has been far from positive. Only reserve residents were represented in the negotiations and were to receive any of the benefits. Many Métis and off-reserve Indians in the region still complain bitterly that their homes and traplines were destroyed and their hunting and fishing rights violated without any consultation or compensation. (AJI, Volume I, page 173-174)

The AJI recommended that:

- The governments of Manitoba and Canada recognize the Northern Flood Agreement as a treaty. The two governments should honour and properly implement the NFA's terms.

- Appropriate measures be taken to ensure that equivalent rights are granted by agreement to the other Aboriginal people affected by the flooding.
- A moratorium be placed on major natural resource development projects unless, and until, agreements or treaties are reached with the Aboriginal people in the region who might be negatively affected by such projects in order to respect their Aboriginal or treaty rights in the territory concerned.

On December 15, 2000, the Minister of Aboriginal and Northern Affairs, the Honourable Eric Robinson, made a ministerial statement in the Legislative Assembly concerning the NFA. He noted that it was of immediate importance to the government to address the devastating consequences of the flooding of First Nations lands for Hydro development. In that statement, he also stated that the Government of Manitoba recognized that the NFA is a modern-day treaty, and expressed the government's commitment to honour and properly implement the terms of the NFA as recommended by the Commissioners of the Aboriginal Justice Inquiry in 1991. The Minister went on to note that the government acknowledges that comprehensive implementation agreements had been signed with four of the five NFA First Nations as a method of addressing and implementing the terms of the NFA.

The Department of Aboriginal and Northern Affairs advise the Commission that the Manitoba government and Manitoba Hydro are negotiating currently with the Northern Affairs communities of Nelson House, Norway House, and Cross Lake, and thereby addressing the concerns of Métis people and non-status Indians as well as status Indians who are living off-reserve and have been affected by the Manitoba Hydro projects. The Manitoba Metis Federation has informed the AJIC that it does not concur with the position that negotiations with the Northern Affairs communities address Métis concerns. The MMF position is that only the MMF and its locals and regional boards represent Métis interests.

The Commission was advised that the Manitoba government and Manitoba Hydro have indicated they would be prepared to participate in negotiations with other flood-affected Métis and non-status Indian communities on the basis of the policy commitment to treat fairly persons affected by the project. Currently, negotiations are ongoing with the non-reserve communities of Nelson House, Norway House, and Cross Lake.

The Aboriginal Justice Implementation Commission recommends that:

4.1

Any future, major, natural resource developments not proceed, unless and until agreements or treaties are reached with the

Aboriginal people and communities in the region, including the Manitoba Metis Federation and its locals and regions, who might be negatively affected by such projects, in order to respect their Aboriginal, treaty, or other rights in the territory concerned.

Introduction to Section Three

Community and Restorative Justice

The Aboriginal Justice Inquiry mapped out a detailed set of reforms to the Manitoba justice system. Many of these reforms were intended as transitional steps to the establishment of an Aboriginal justice system, while others were intended to address issues that would arise in those communities where Aboriginal justice systems would have no jurisdiction. The following five chapters review these recommendations and provide a strategy for implementation.

The strategy proposed by the AJIC is based on the principles of community justice. This is a community-based, restorative justice model. It views crime as an attack on the victim and as a disruption of community balance. It seeks to mend the harm done to the victim and the community. There is no single community justice program or set of policies that can be simply introduced into a community—by definition, different communities fashion their own approaches. It involves new approaches to how one defines a crime, the role of a police force and its relationship to a community, the role of the courts, the types of sanctions that are employed, the justice system's recruiting policies, and the system's obligations to the victims of crime. Most importantly, it envisions a much bolder and comprehensive role for the community in the ongoing operation of the justice system. One measure of progress towards a community justice system is the degree to which the measures taken reduce the involvement of the criminal justice system in the lives of individuals and communities, and increase community involvement in finding solutions for crime.

Where the current system is centralized, isolated, and focussed on criminals, a community justice approach is rooted in neighbourhoods, requires collaboration among citizens, and is attuned to the situation of the victims and the community at large. The issues that the criminal justice system addresses are serious, complex, and persistent. The AJIC recognizes that community justice approaches will not cause these problems to disappear. While community and restorative justice approaches take a less punitive approach to the administration of justice, they must retain a strong appreciation of how crime affects victims and communities. A process that seeks to restore community balance cannot place victims at greater risk.

Such a system will not be brought into existence quickly. However, the proposals in the following section are based on both the AJI recommendations, and on the AJIC's understanding of the wishes of the Aboriginal community and the government's commitment to implementing the AJI.

The Commission gives priority to measures that:

- reduce the use of incarceration and encourage correctional program service delivery in communities
- use alternative or conditional sentences for as many offenders as possible
- encourage support and confidence in the system, through more Aboriginal-controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels, and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training
- provide adequately resourced treatment programs for offenders and others
- provide community policing rooted in genuine partnership among police officers, police departments, governments, and the community
- assist more community involvement, where communities want and have the capacity to assume and maintain justice roles, and provide adequate resources for these communities to discharge their duties

Chapter Five

Youth Justice

Introduction

Two of the Aboriginal Justice Implementation Commission's key priorities are the need to focus on children, youth, and the family, and the need to prevent young people from becoming involved with the justice system. Dealing appropriately with young people who come into contact with the justice system is essential to prevent re-involvement and long-term problems.

The Commission believes that recommendations based on the Young Offenders chapter of the *Report of the Aboriginal Justice Inquiry* are appropriate. The Commission believes that many of the recommendations suggested by the Inquiry may be implemented without the expenditure of new funds.

Aboriginal Justice Inquiry Recommendations

In the Young Offenders chapter of its report, the Inquiry made recommendations aimed at both the provincial government and the federal government. The recommendations aimed at the federal government dealt, for the most part, with amendments to the Young Offenders Act. The Commission is aware that a new Youth Criminal Justice Act is before the Parliament of Canada and that the proposed Act was, and continues to be, the subject of extensive debate across the country. The Commission does not propose to comment on that aspect of the Inquiry's work, as the Commission's mandate requires it to make recommendations addressing those areas for which the Province of Manitoba is responsible and accountable.

In the chapter on Young Offenders, the Inquiry endorsed the following approaches:

- young people be treated in a way that has the least interference with their freedom and is compatible with the protection of society, their own needs, and their families' interest
- pretrial detention be used only when absolutely necessary

- young people be transported out of their home communities only as a last resort
- custody be used only when necessary
- more and better use be made of community resources for diversion programs
- diverting young people out of the court system completely, or using alternative measures programs that provide options for dealing with young people once they have been charged, be used as much as possible

Current Situation

The Department of Justice advises that steps have been taken and programs have been put in place to attempt to address the issue of overrepresentation of Aboriginal young people in jails. The Commission was advised, for example, that in 1993, 25 percent of the young people in custody were from northern Manitoba, while the current figure is 8 percent. In addition, the Department of Justice has established a Youth Bail Management program in Winnipeg in an effort to keep young people out of custody in inappropriate situations such as, for example, where a young person has no place to spend the night. Finally, the department has expanded the number of youth justice committees from 32 in 1987 to 66 currently.

However, the issue continues to grow. According to the Inquiry, on October 1, 1990, Aboriginal young people accounted for 64 percent of the inmates of the Manitoba Youth Centre and 78 percent of the inmates at Agassiz Youth Centre. As of September 6, 2000, the male and female, sentenced and unsentenced, Aboriginal young people in-custody population was 77 percent at the Manitoba Youth Centre and 85 percent at Agassiz Youth Centre. Manitoba also has the highest percentage of admissions of young people to remand in Canada. In Manitoba, 70 percent of the young people admitted to custody are admitted to remand, which means they are waiting for a court hearing or sentencing. The vast majority of these young people would be persons who have been denied bail while awaiting trial. They are in custody notwithstanding that they have not been found guilty of an offence.

In summary, the important points to note are:

- Manitoba admits a high number of young people into custody in comparison to most other provinces.
- Aboriginal young people are vastly overrepresented in sentenced custody admissions, at 75 percent of sentenced custody admissions in 1998-99, versus 16 percent of the youth population.

- Manitoba has a very high rate of admissions to remand custody. For example, in a recent one-day snapshot, of 278 young people in custody, 114 were on remand custody.
- Overrepresentation has become more of an issue of Winnipeg young people as the number of Aboriginal young people in remand from outside Winnipeg has declined.

Commission Comments

Based on the findings of the Inquiry and on the Commission's consultations and research, the Commission supports the recommendations made to Manitoba in the Inquiry's chapter on Young Offenders. The Commission supports the least interference, and a proportionate, incremental approach to the involvement of young people in the justice system, as outlined by the Inquiry. The Commission notes this approach is also supported in The United Nations Convention of the Rights of the Child, which Canada has ratified. Article 37 states:

> Parties shall ensure that:
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. (*Convention of the Rights of the Child*, page 18)

The Commission recognizes that public safety will require the incarceration of some young people, but also believes it is important to recognize that the inappropriate jailing of a young person can cause more harm than good. For example, it is no credit to a society that a young person is kept in jail because he or she has no place to sleep, or because there is no one to take responsibility for the young person, or because his or her lawyer is unable to appear at a bail hearing that day. The Commission believes we as a society can do better than that.

The justice system is made up of many individuals who are required to make many discretionary decisions. The Inquiry laid out an approach for police, Crown attorneys, youth justice committees, and chiefs and council that encourages a proportionate, incremental response, starting with diversion from the court system as much as possible. In schedules A and B to this chapter, the Commission repeats, for the consideration of appropriate authorities, the approach and alternatives to custody that the Inquiry suggested police, Crown attorneys, and judges consider.

The Inquiry commented upon the disproportionate impact on Aboriginal young people of the "normal" and "ordinary" approaches that Justice personnel take. It said,

> It is well known that Aboriginal communities have long been isolated by culture, geography, poverty and deprivation, and so have been overlooked, ignored and excluded by the rest of society. This can be seen clearly in northern and remote Aboriginal communities. But what may not be well understood is the impact these conditions have had upon decisions made about their lives in the criminal justice system.
>
> In deciding whether to grant bail, whether to consider a custody sentence or whether to release a young Aboriginal person from custody, criminal justice officials will frequently consider factors such as whether the young person has a job or is involved in an education program. The court considers whether the young person's parents are employed. It considers the perceived "stability" and resources of the family and the community, the presence of alcohol or drug problems, whether the youth or the youth's parents have a fixed address and, if so, how long they have lived at that address. Decisions made on the basis of these types of factors discriminate against Aboriginal people, because those factors are linked directly to the marginal social, cultural and economic place of Aboriginal people in society." (AJI, Volume I, page 586)

The Commission believes this is an important point that should be remembered by all, especially in dealing with the situation of the very high number of young people in custody on remand, a very high proportion of whom are Aboriginal young people.

The high number of young people in pretrial detention is of concern to many in the justice and child welfare system. The Commission heard many possible causes and suggestions for improvement, including:

- lack of available beds in the Child Welfare system
- lack of alternatives available to judges
- inconsistency in timely attendance by counsel
- use of discretionary decisions by all involved

What may be lacking is recognition of the seriousness of the issue and a committed and concerted effort to ensure that pretrial detention is used only in appropriate cases, primarily where the issue is one of public safety.

The Aboriginal Justice Implementation Commission recommends that:

5.1
The Government of Manitoba commit to reducing the number of young people held in pretrial detention in Manitoba from one of the highest in Canada to at least the national average, and put in place the services to accomplish this.

5.2
As part of a demonstrated commitment to reducing the number of young people held in pretrial detention, the Department of Justice should, as often as possible, publish comparative statistics on its website. If statistics comparing Manitoba with other provinces are only available annually the department should publish its own statistics quarterly with comparative numbers annually.

As there are many possible causes for the high number of young people in pretrial detention, there is also a need for a variety of solutions. One of the more promising partial solutions is improvement and expansion of the Youth Bail Management program. The Commission suggests the government give careful consideration to this approach.

The Inquiry made a number of recommendations in support of its overall approach to the treatment of young people by the justice system. The Commission believes these recommendations support a least interference, proportionate, and incremental, approach and recommends the following to the government of Manitoba. Specifically, the AJIC recommends the implementation of the following AJI recommendations:

5.3
The police consider alternatives to the laying of charges in all cases involving Aboriginal youth and, when appropriate, exercise their discretion to take no legal measure or to take measures other than laying a charge.

5.4
Police departments continue to designate youth specialists and provide specialized training to all officers involved in the administration of the Young Offenders Act.

5.5
When a youth court judge denies bail, the judge consider releasing the young offender into the custody of his or her parents, or another responsible person, as contemplated by section 7.1(1)(a) of the Young Offenders Act.

5.6
Aboriginal communities be provided with resources to develop bail supervision and other programs that will serve as alternatives to detention.

5.7
Young offenders be removed from their community only as a last resort and only when the youth poses a danger to some individual or to the community.

5.8
Child and family service agencies be directed to continue to provide services to youth clients charged with an offence.

5.9
Child welfare and youth justice services be better integrated and co-ordinated so that all their services are available to young people charged with offences.

5.10
The adequacy of administrative and financial resources provided to youth justice committees be assessed.

5.11
The provincial government establish Aboriginal focussed diversion and alternative measures programs which incorporate the following principles:

- **Aboriginal culture must be integrated into the program. Diversion schemes which involve the use of Aboriginal elders, peacemakers and other aspects of Aboriginal culture appear to have the greatest potential for success. In the context of Manitoba's urban Aboriginal communities, the program decision-makers could be drawn from the Aboriginal community within the urban environment.**
- **Judges must allow the community to become involved in sentencing but they must retain ultimate responsibility for sentencing.**
- **The program should attempt to involve all those who have a direct interest in the case, including the victim and the community.**
- **Programs should be able to accept referrals at any stage of the criminal justice process. They should also be able to accept referrals from the community before any charges have been laid and, if possible, before the authorities become involved.**

- **The community's respect for the program is vital. This means that one primary goal of the program must be to seek reconciliation and the restoration of peace in the community.**

5.12
The establishment of a range of innovative options that can be used by the decision-makers will be critical to the success of alternative measures programs based in Aboriginal communities. An appropriate plan for an Aboriginal youth might, for example, involve participation in an Aboriginal operated wilderness program, an education program, an employment training program, or a treatment program.

5.13
Aboriginal supervisors from the community must monitor the disposition. The community must see sanctions that originate from, and are enforced by, the community, and not some outside force.

5.14
These programs should be formally designated and recognized as Young Offenders Act programs so that their role has official recognition and official support.

5.15
The Aboriginal Court Worker Program provide a court worker wherever Youth Court sits.

One caution the Commission wishes to make is that careful attention must be paid to the issue of a proportionate response and least interference. The lowest sanction possible and appropriate should be used in order not to "net widen," or use greater resources than necessary to address an issue. It is of no benefit to use probation, a family group conference, or appearance before a youth justice committee, when a simple warning will suffice. The resources used to supervise probation, or to conduct a family group conference or a youth justice committee in that situation are resources that are not then available for a more serious case. As much as possible, intervention needs to be targetted to the needs of the young person.

Other Recommendations

The Inquiry made other recommendations on which the Commission wishes to comment. The Inquiry recommended that accused young people who must be held in pretrial detention be held in detention facilities in their own communities. The Commission believes pretrial detention should be used as a last resort for young people and that all other options should be considered before pretrial detention is used. The Commission was advised that one factor in the reduction in the number of young people from the North involved in the justice system may be the strong and effective stand in managing child welfare issues taken by Aboriginal child and family services agencies in the North. It has been suggested that, with a community-based response, young people who previously would have been charged with offences and be sent to custody are now handled more appropriately by local child service agencies.

The Commission is loathe to recommend the construction of detention facilities in all Aboriginal communities, and recommends that if no other option is available, the Justice department contract with local operators to provide open custody services. Secure custody facilities for pretrial detention should be kept to a minimum.

The Inquiry also recommended that youth probation for Aboriginal young people be made part of the responsibility of Aboriginal child and family service agencies. The Commission believes that the effect of its recommendations that child and family services for Aboriginal people, and probation services for Aboriginal people, be delivered by Aboriginal-controlled agencies should result in closer coordination of youth probation and child welfare services.

An issue arising out of pretrial detention is the transportation of young people out of their own communities, either from the north to the south and back, or from a First Nation or Métis community to a northern urban centre. The Commission has been advised that this practice has decreased but is still of concern to the Department of Justice. The Commission believes that public transparency might aid the effort to find a solution to this problem.

The Aboriginal Justice Implementation Commission recommends that:

5.16
The Department of Justice collect and publish monthly statistics showing the number of young people in custody who have been transported from their home community to another location, the reason for the movement, and the time the young person spent away from his or her community.

If the department finds, for example, that a high percentage of the young people transported originate in one or two areas, and that they are regularly released on appearance before a judge and transported back to their home, the department would have cause to investigate. Publication of the statistics will give those who have questions for the department information to formulate appropriate queries.

In its chapter on Young Offenders, the Inquiry also made recommendations for Aboriginal participation at all levels in the youth justice system and the need for crime prevention approaches. The Commission addresses both of these issues in subsequent chapters of this report.

The Commission wishes to restate its view that its preferred approach to the issue of young people involved with the justice system is to focus on approaches that will help ensure they are not involved with incidents that will bring them into contact with the justice system. Those approaches involve supporting early childhood development, strong ties to family and community, and sports and recreation activities, and encouraging education.

Schedule A

Consideration of the Use of Diversion

Report of the Aboriginal Justice Inquiry, page 579

Those involved in the justice system should give strong consideration to the use of diversion whenever an inappropriate act of a young person is brought to their attention.

- **The Police**. When an offence has been committed, the police are contacted and are usually the first representatives of the justice system to examine the circumstances. It is the police who decide if the youth should be charged and, if so, what charge is to be laid.

Police authorities should be directed by the Minister of Justice to consider whether some diversionary program is available and appropriate, rather than immediately laying a criminal charge. They should consider speaking to and, if necessary, lecturing the youth. A letter to the parents, warning of the youth's conduct, might be of value. A meeting with the youth, the parents and the band chief, or a member of a youth justice committee, might be all that is necessary to indicate the unacceptable nature of the conduct and to discourage repetition. If the police do not want to remain involved, referral to a justice committee might be appropriate. This is more likely to happen if community-based policing is being practised.

The Crown Attorney. The Crown attorney should proceed in a manner similar to that which we propose for the police. If the police bring a matter to the Crown attorney and charges have been laid, or are being considered or recommended, the Crown should consider whether the case can be diverted from the court process. If the Crown attorney is not aware of any services available in a certain community, people from that community, such as the chief or the justice committee, should be consulted to see if they would be willing to try to deal with the problem.

It should be Department of Justice policy that diversion be carefully considered before a criminal charge is laid or proceeded with.

Youth Justice Committee. These committees should do whatever is necessary to make sure that police, lawyers and the court are aware of their existence and the services they provide. They should also keep records to show the results of their efforts. It is important for others involved in the justice system to know which programs have been of value.

Chief and Council. The chief and council, as representatives of their community, should support diversion programs and should encourage the establishment of youth justice committees and other support groups within their community. In this way, they can assume more control over what happens to youth from their community. A continuing and supportive dialogue should take place between the chief, the police, lawyers and judges serving their community.

Schedule B

Alternative Measures,
Report of the Aboriginal Justice Inquiry, page 580

The Inquiry suggested that police, Crown attorneys and judges consider alternative measures in every case. Some of the alternative measures the Inquiry thought should be considered are:

- Staying of proceedings. This might be appropriate where the youth has learned a lesson from his or her conduct and from what has happened to him or her in being apprehended and brought to court.
- Returning the youth to the parents with a reminder of the potential for problems and the direction to be responsible for the conduct of the youth.
- Placing the child with a person who is willing to have the youth in his or her residence and is prepared to give the youth needed support and guidance.
- Requiring the youth's attendance at counselling programs. These programs might be to develop life skills or to deal with a substance abuse problem.
- Requiring the youth's attendance at a particular school, either for academic or vocational training.
- Requiring the youth to apologize to the victim.
- Requiring the youth to make restitution or perform services for the victim.
- Requiring the youth to do general community work under the direction of some specified person or the administrator of community service orders.
- Referring the youth to a youth justice committee for its attention.
- Referring the youth to a peacemaker.
- Requiring the youth to appear before the chief and council and to make an apology to the whole community.

Chapter Six

The Courts

The Aboriginal Justice Inquiry's recommendations in the area of court reform were guided by a commitment to the establishment of Aboriginal justice systems. The creation of such systems requires action by both the federal and provincial governments, and is not therefore, within the mandate of this Commission. However, the AJI report also identified needed reforms to the current court system. Aboriginal witnesses who appeared before the AJI presented compelling evidence that the Canadian justice system had failed Aboriginal people and Aboriginal communities. Witnesses argued that the system did not understand local conditions, failed to rehabilitate, and contributed to Aboriginal overincarceration. Furthermore, despite the system's expense and power, it did not reduce crime or improve community safety. The reforms proposed by the AJI were intended to enhance community involvement in the courts, probations, and corrections, and, in effect, outline a community justice approach to justice issues.

For example, the AJI recommended measures that addressed:

- Aboriginal people's understanding of the court process
- delay in the court process
- the poor service provided by the circuit courts in Aboriginal communities
- the overuse of pretrial detention
- the need for community involvement in court practice
- the overuse of incarceration, and the need for correctional program service delivery in communities, and for alternative or conditional sentences
- the need for a greater Aboriginal presence in probation services

The recommendations provide communities with a greater role in defining problems, developing approaches, reaching decisions, and then implementing those decisions. While community justice approaches are particularly appropriate in Aboriginal communities where, in the past, the justice system has often appeared to be little more than a foreign and imposed regime of punishment and regulation, it may be that incorporating community justice approaches in our legal system would benefit all Manitobans.

Community justice approaches enhance the legitimacy, fairness, and effectiveness of the justice system. Furthermore, a community justice approach is supportive of, and, indeed, integral to, the community development approach to crime prevention that is outlined in Section Four of this report.

This chapter reviews the AJI community justice recommendations, summarizes the progress that has been made on implementation, outlines trends and issues in the establishment of community justice approaches, and concludes with a set of community justice recommendations.

AJI Recommendations:

Aboriginal Understanding of the Court Process

The Aboriginal Justice Inquiry recommended that:

- Judges insist that whenever an Aboriginal person is entering a guilty plea, the following procedure be followed:

  a) The charge is read in full to the accused.

  b) The judge confirms that the accused understands the charge by asking the accused to explain it.

  c) The accused, and not counsel, enters a plea.

  The judge confirms that the accused agrees with the guilty plea and that it is being given freely and voluntarily with a full appreciation of the nature and consequences of the plea.
- The Province of Manitoba establish a formal Court Interpreter's Program with staff trained in the interpretation of court proceedings, including legal terminology, from English into the Aboriginal languages of Manitoba. As part of this program, local court interpreters should be engaged in each Aboriginal community served by circuit courts.
- The Province of Manitoba, in consultation with the Manitoba Association for Native Languages, establish a Legal Interpretation Project to develop appropriate Aboriginal translations of English legal terms.
- The Aboriginal Court Worker program have an Aboriginal board of directors and take over the functions and staff of the existing court communicator and paralegal programs. Court workers should be available in every Aboriginal community serviced by the circuit courts.

These recommendations address a fundamental point: justice must not only be done, but it must be seen to be done—and that means that the people affected by the operation of the justice system must understand the system and have a meaningful input into that system.

While the AJI recommendations have not been formally adopted, the Aboriginal Justice Implementation Commission has been informed that progress has been made towards meeting the AJI's goals in this area.

The establishment of an Aboriginal Magistrate's Court, operating out of Thompson as a part of the First Nations Justice Strategy (FNJS), is an important initiative in improving community understanding of the justice system. For example, the magistrate has adopted the AJI's recommended approach in taking guilty pleas. The Aboriginal Justice Implementation Commission has been informed that, as a general rule, judges of the Provincial Court apply the AJI proposals on guilty pleas as they deem required.

While there is no formal Court Interpreter's program or Legal Interpretation project, the Aboriginal Court Worker program has hired graduates from the Red River College program for interpreters in Aboriginal languages. As part of the First Nations Justice Strategy, eight northern Aboriginal communities have Aboriginal court workers who are hired directly from the circuit court communities. The Aboriginal Court Worker Program Advisory Board, which represents the Aboriginal community, has examined the board's role and mandate. To date, they have not recommended any changes, such as becoming a Board of Directors.

Reduce Delay

The Aboriginal Justice Inquiry recommended that:

- Special court sittings be organized to address all cases outside the city of Winnipeg which have been outstanding for more than six months. If necessary, additional staff should be hired until all these cases have been disposed of.
- The judiciary establish timelines and procedures that will ensure that a case gets to trial within a reasonable time.
- Manitoba courts implement a comprehensive case flow management program.

Delay continues to be a problem in the Manitoba court system, particularly for circuit courts. The AJIC has been informed that the province is currently testing a comprehensive case-management system to reduce delay. The AJIC was also informed that northern circuit court delay has been reduced by the work of the Aboriginal Magistrate's Court.

Improve the Circuit Courts

The improvements proposed to the circuit courts were intended to strengthen their impartiality, ensure that they operated efficiently, and bring to an end the rushed, hurried, and often chaotic appearance of the circuit courts in northern communities. The Aboriginal Justice Inquiry recommended that:

- Proper court facilities be established in Aboriginal communities that will be available for court purposes as required.
- Unless they are travelling in commercial airplanes, circuit court judges not travel with lawyers or police to circuit court sittings.
- Circuit court sittings be scheduled in such a manner as to allow all the matters on a docket to be dealt with in one court visit. This may entail scheduling two-day visits to many communities.
- Lawyers attend in circuit court communities at least one day before court to ensure that cases can be properly prepared.
- Legal Aid duty counsel be authorized to grant interim approval of all Legal Aid applications. If, upon review, the applicant does not qualify for Legal Aid, the approval could be cancelled.
- Legal Aid application procedures be amended to allow accused individuals who live in communities where there is no Legal Aid office to apply by telephone. Where no Legal Aid staff are available, Aboriginal court workers be authorized to accept and forward Legal Aid applications.
- The position of court administrator with magistrate's powers be created in each Aboriginal community served by a circuit court.

A number of these proposals, particularly the establishment of court facilities, separate transportation, and prior visits by lawyers to fly-in communities, have not been adopted.

However, the First Nations Justice Strategy has reduced the size of the dockets and made it possible for circuit court judges to deal with all the matters on the docket in a one-day visit in a number of communities. In a separate pilot project in Garden Hill, the Crown attorney, a Legal Aid lawyer, and a magistrate go into the community the day before the judge arrives. They conduct interviews, discuss cases, and dispose of as many matters as possible before the arrival of the judge. Legal Aid has paralegals attend in a number of communities to facilitate solicitor-client interaction.

The establishment of the full-service duty counsel program allows Legal Aid duty counsel to deal with guilty pleas immediately, rather than have to remand for a Legal Aid application.

Furthermore, Legal Aid now allows accused persons who cannot travel to a community where there is a Legal Aid office to make application by telephone. A similar service is also available, on an informal basis, for persons seeking coverage for domestic or civil matters.

Efforts to recruit Aboriginal community magistrates have been hampered by the volume and complexity of issues with which a magistrate must deal. Changes to the Criminal Code to allow for telephone bail have been of some assistance, and it is anticipated that video links between remote communities and court centres will also be of assistance.

Despite these improvements, it must be stressed that the Aboriginal Justice Inquiry's critical assessment of the circuit courts, as the clearest example of "the unequal and uneven manner in which the current justice system deals with Aboriginal people," still stands (AJI, Volume 1, page 227).

In addition to the issues raised by the AJI recommendations, it is also the case that there are a number of Aboriginal communities that have sought to have circuit court held in their communities. At present, the circuit court sits in neighbouring non-Aboriginal communities, even though the vast majority of people on the court docket are Aboriginal people from Aboriginal communities. Moving the court to the Aboriginal community would allow for greater involvement in the court process for Aboriginal people and greater use of Aboriginal community resources.

Bail

The Aboriginal Justice Inquiry recommended that:

- Bail hearings be conducted in the community where the offence was committed.
- The Manitoba government establish a bail supervision program to provide pre-trial supervision to accused persons as an alternative to detention.
- Aboriginal accused be released on bail in their home communities whenever possible.
- If Aboriginal accused are transported away from their home communities to be held in custody and are subsequently released on bail, the arresting authority be responsible to convey them back to their home communities.

The AJIC has been informed that, other than in larger communities where court is held daily or every few days, it would be impractical to hold bail hearings in the community where an offence was committed. An accused person must be brought before the court for a bail hearing quickly, usually within 24 hours. It would be prohibitively expensive to have standby court parties that could be flown into remote communities to hold bail hearings within 24 hours of an arrest. However, amendments to the Criminal Code have given police officers greater discretion to release alleged offenders. A telephone bail program operating out of Winnipeg serves remote communities seven days a week, from 7:00 am to 11:00 pm. Unfortunately, it appears the program has not had the intended impact of reducing the number of people being transferred out of their home community. Manitoba Keewatinowi Okimakanak (MKO) community justice workers were to be given additional training in bail hearings and community supervision with the goal of reducing the number of people on bail being transported out of their home community.

If bail is granted, the government is responsible for transporting the individual back to her or his home community.

Manitoba Corrections operates bail supervision programs for both young people and adults. As of the 2000 year-end the Youth Bail Management program had an active caseload of 81 young people, 60 percent of whom are Aboriginal. At the same time, the Adult Bail Supervision program was supervising 425 adults, 18 percent of whom are Aboriginal. While the courts attempt to release individuals on bail in their own communities, a lack of resources means it is not possible to provide bail supervision in many remote communities.

Community Involvement

The Aboriginal Justice Inquiry recommended that:

- Peacemakers be appointed in each Aboriginal community in Manitoba. They should be appointed through procedures which are agreed to by the community.
- Peacemakers, recommended by recognized local Aboriginal groups, be appointed in Winnipeg and in other urban centres throughout the province.
- Judges invite Aboriginal communities to express their views to the court on any case involving an offence or an offender from their community.
- Aboriginal communities be encouraged to develop the best method of communicating their concerns to the court in a manner that is respectful of the rights of the accused, and of the dignity and importance of the proceedings.

The concept of a peacemaker is drawn from the tribal court system in the United States. According to the AJI, the goals of a peacemaker are to:

- determine the cause of a problem that may result, or has resulted, in a dispute or a criminal charge

- determine the effect on the victim and his or her attitude towards the offence and the offender
- bring home to the offender that his or her conduct is unacceptable in the community
- counsel the offender
- attempt to ensure that there will be no repetition of the unacceptable conduct
- provide ongoing support to the offender and the family
- involve the families and place some continuing responsibility for the conduct of the offender upon his or her family
- restore peace in the community

A Peacemaker Program is currently being introduced in the Interlake Tribal Council communities.

Consultation between judges and community members can take place at the discretion of the presiding judge. In a number of communities, judges do allow community members to participate in the disposition of several matters, and the possibility exists for the further expansion of this process. The communities where this practice is most well developed are those participating in the First Nations Justice Strategy, and communities such as Hollow Water and Waywayseecappo. In addition, a number of communities involved in Department of Justice initiatives have Elders and other community-based justice workers or justice committee members attend. They are invited to express the concerns of the community.

The overuse of incarceration, and the need for correctional program service delivery in communities, and alternative or conditional sentences

The Aboriginal Justice Inquiry called for a philosophy of sentencing that:

> Would make less use of correctional facilities, strengthen the use of community sanctions, address the needs of victims and offenders, give proper consideration to cultural factors when formulating sentences and allow the community to play a meaningful role in the development and monitoring of sentences. (AJI, Volume 1, page 390)

It argued that the current sentencing philosophy placed too heavy a reliance on incarceration. As a result, the AJI stated that:

> Large numbers of Aboriginal people are taken from their families and communities to be locked away in correctional institutions. In these institutions, which are costly to build, maintain and operate there is little in the way of constructive programming. As a result, the institutions are not effective in rehabilitating or deterring offenders. Not surprisingly, the system is viewed by Aboriginal people as a foreign one, and there is much bitterness about the unfair way that Aboriginal people and Aboriginal communities are treated. The price that Aboriginal families pay, in terms of family breakdown, loss of income and educational opportunities, cannot be overestimated.
>
> The emphasis on incarceration also ignores the needs of the victims of crimes, and the possibilities of reconciling offenders with victims and the broader community. Courts have the power to order restitution and community service, and we believe that for many people who are currently incarcerated these sorts of sentences would have been more appropriate. These sanctions are not only less expensive than incarceration, but they hold the promise of healing communities, rather than simply punishing offenders. They also provide a clearly visible sanction within the community. (AJI, Volume 1, page 390)

These approaches led the AJI to make the following recommendations:

- Incarceration be used only in instances where:
  a) The offender poses a danger to another individual or to the community.
  b) Any other sanction would not sufficiently reflect the gravity of the offence.
  c) An offender wilfully refuses to comply with the terms of any other sentence that has been imposed.
- The provincial Justice department regularly and consistently collect, analyse and distribute information on the success rates of all sentences, and distribute that information to judges, Crown attorneys and the defence bar.
- Probation officers be available when courts sit in Aboriginal communities to explain the results of pre-sentence studies.
- The Manitoba Court of Appeal encourage more creativity in sentencing by trial court judges so that the use of incarceration is diminished and the use of sentencing alternatives is increased, particularly for Aboriginal peoples.
- The Criminal Code be amended to provide that cultural factors be taken into account in sentencing, and that in the meantime judges be encouraged to take this approach.
- Conditions of probation orders be related directly to the circumstances of the offence and the offender, and be conditions that can be realistically adhered to by the probationer.
- There be a reorganization of the way community service orders are administered and supervised so that organizations are provided with the

necessary resources to ensure that orders are fulfilled and that judges are provided with the necessary information to allow them to match offenders with programs.

- Judges make greater use of orders of restitution.
- The existing Maintenance Enforcement Program be expanded and adapted to administer the Fine and Restitution Recovery Program.
- The automatic assessment of a term of imprisonment in default of payment of fines levied by Common Offence Notices be abolished, and that the Fine and Restitution Recovery Program apply.
- The Criminal Code and other legislation allowing for the levying of fines be amended to require that, before levying any fine, judges be required to determine whether a person is able to pay a fine; and that fines not be imposed if the offender is unable to pay the fine at the time of sentence or within a reasonable time thereafter.
- Where a judge orders the performance of community service work of a specified number of hours, the judge have the option to specify the type and place of work, thus allowing the judge to fashion an appropriate sentence and eliminate the need for the offender to apply elsewhere to enter a program.

As can be seen, the AJI recommendations sought to reduce reliance on incarceration, to ensure that sentencing was culturally appropriate, to extend the judicial power over the execution of sentences, and to ensure that fines were collected while at the same time ensuring that people were not incarcerated for the non-payment of fines.

A number of measures have been taken to provide judges with more guidance and more flexibility in sentencing. The 1995 amendments to the Criminal Code provide that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate and increase the options to incarceration. These provisions are section 742.1, which allows for sentences of two years less a day to be served in the community if certain risk factors and other conditions are met (conditional sentences), and section 717, which legislatively allows for the use of alternative measures for adults (alternative measures). The Commission was advised, however, that Manitoba has not adopted a formal alternative measures policy, which would set out the types of cases and offenders that are eligible for alternative measures. In addition, the proposed Youth Criminal Justice Act states that a sentence must be the least restrictive sentence that is capable of providing a meaningful consequence, and of promoting rehabilitation and reintegration into society.

The AJIC also notes the changes in the Criminal Code that allow for the courts to take the circumstances of Aboriginal offenders into consideration when sentencing. The Supreme Court of Canada in *R. v. Gladue* (1999), 133 C.C.C. (3d) 385, explained how this provision should be applied.

Manitoba Justice has established Youth Alternative Measures Protocols that determine whether an offender is eligible for diversionary programs. Under these protocols (which are currently being revised), an offender must be determined to have a low risk of reoffending and be non-violent. Currently, 16 community accountability programs work with offenders under these protocols. Many of these programs have a specific Aboriginal focus, while in other cases a large percentage of their clientele are Aboriginal. Manitoba is also supporting the Manitoba Metis Federation for the first phases of a court diversion program in the Parklands Region.

On the broader issue of whether judges should be matching offenders with programs, detailing probation provisions, and designating the nature and place for community service work, there exists a difference of opinion. The Manitoba government position is that judges should not manage cases post-sentencing. The government argues that for reasons of liability, in determining the offender risk level and matching offender needs to programming, the government should control the administration of court-imposed sentences, including the designation of the specific place of custody for offenders. (It should be noted that Community Corrections officials do meet with Provincial Court judges to establish procedures for the administration of sentences.) The Aboriginal Justice Implementation Commission recognizes both the need for judicial independence and the validity of the government's concerns. For this reason, the AJIC encourages judges to explore the options that recent changes in the law have provided them in fashioning sentences that meet the needs of the community and the offender. The AJIC further believes that if its recommendations on probation services (below) were adopted, judges would be able to make even greater use of currently available sentencing options.

Unfortunately, for cost reasons, probation officers do not attend courts in Aboriginal communities. As a result, sentencing judges cannot question them on their pre-sentencing reports. Such information, as the AJI suggests, is required to ensure that sentences are appropriate. The development of Aboriginal and community-based probation services has the potential of addressing these issues.

The AJI recommended improving the resources available to organizations that supervise community service orders. According to the Manitoba government, the payments to these organizations had not increased in nine years until fiscal year 2000-01, when increases were granted. The AJIC has been informed that, due to a set of policy and legal changes, currently no one in Manitoba is imprisoned solely on the basis of the non-payment of a fine. The government has announced an intention to establish an Offender Debt Collection program that would use civil means such as garnishment of wages to collect unpaid fines, along with such measures as a refusal to issue or renew a driver's licence, the fine option program, and a lien on a vehicle for parking offences.

The Manitoba government has informed that AJIC that it intends to introduce a provision in the new Provincial Offences Procedures Act, similar to the Criminal Code provision that requires the courts to satisfy themselves that offenders can either pay or discharge a fine before imposing the fine.

The Manitoba government has appointed a research coordinator and is increasing its ability to monitor and measure corrections outcomes. As well, Manitoba Corrections is involved in a national study with the Canadian Centre for Justice Statistics, which will yield a national and regional picture of the success rates for both adult and youth custodial and community supervision sentences, based on 1993 statistics.

Probation

The Aboriginal Justice Inquiry recommended that:

- Regional, Aboriginally controlled probation services be created to serve Aboriginal communities; and that Aboriginal people be employed by the Province as probation officers in numbers at least proportionate to their presence in the provincial population.
- All Aboriginal offenders be supervised by Aboriginal probation officers.
- Probation officers assigned to handle cases of Aboriginal persons be able to speak the language of the probationer.
- When Aboriginal probation officers are not available to supervise Aboriginal offenders, judges make greater use of section 737(a) of the Criminal Code, which permits the court to place a person under the supervision of some "other person designated by the court."
- Courts seek out individuals in Aboriginal communities who are willing to accept the responsibility of supervising individuals placed on probation.

Progress has been made on a number of issues in this area. The Manitoba Corrections Division has community participation agreements with approximately 30 Aboriginal communities and service agreements with another five Dakota Ojibway Tribal Council (DOTC) communities. These agreements provide the First Nations communities with funding and support to employ an indigenous person to deliver community correctional services.

Province-wide, approximately 25-30 percent of probation officers are Aboriginal. One hundred percent of probation officers in The Pas Community

Corrections office are Aboriginal, while in the Thompson office 70 percent are Aboriginal.

In 1993, Manitoba Corrections instituted the Anishinabe Pitama Committee of Aboriginal corrections staff, formed to provide corrections management with assistance and advice regarding Aboriginal staff recruitment, promotion, training, programming, classification, support, and secondment. The Committee will contribute to program development for Aboriginal offenders and to help design and deliver Aboriginal cultural awareness training to non-Aboriginal staff.

The Commission has been advised that Aboriginal organizations are interested in providing probation services to Aboriginal people, and that the Government of Manitoba is also interested in developing a process that would result in probation services for Aboriginal people being provided, primarily by Aboriginal probation officers.

The Aboriginal Justice Implementation Commission acknowledges that progress has been made in a number of areas. New sentencing and bail policies have come into existence. A number of community-based justice initiatives have also been developed. However, it is also the case that the court process is far too slow, and, for Aboriginal people, remote and imposed. Community justice initiatives have the potential to address these problems and can assist in reducing incarceration, increasing the legitimacy of the justice system, and, perhaps of greatest importance, allowing communities to re-establish social equilibrium.

Issues in Community Justice

Expectations

Justice systems address symptoms, not causes, of crime and social disruption. Over the last three decades, there has been a growing dissatisfaction with the North American justice system's ability to reduce crime and social disruption. There has been a considerable degree of disagreement as to whether this failure is because the system is too punitive or is not sufficiently punitive. There is little disagreement, however, on the point that a very costly system is producing very unsatisfactory results. There is a danger, however, in assuming that community justice systems on their own can reduce crime rates and social disruption. Unless social and economic conditions are also addressed, a move to a community justice system can, at best, ensure that justice is administered in a more effective manner that is accepted as legitimate by the community. It will always be difficult to reintegrate offenders into a community—it is a truly difficult task if the community is unstable and provides few employment, educational, or recreational opportunities.

Resources

Whether one looks at the lengthy periods of delay in Manitoba's court system, the overcrowding and lack of resources in its correctional institutions, the caseloads that probation officers carry, or the waiting list for rehabilitation programs, one can only conclude that the provincial justice system is either suffering from a lack of resources or is allocating those resources in an inefficient manner. These service problems underline the need for change. But they serve to remind us that if the Province of Manitoba experiences resource shortages in operating its justice system, Aboriginal communities will face similar, if not more severe, resource problems if more justice responsibilities are moved into communities. It is unrealistic to expect that a community justice system can be maintained into the future if it depends in large measure on the contributions of volunteers. Community supports are extremely important in determining the success or failure of many intervention programs. However, intervention must be offered on an ongoing and long-term basis if it is to be effective.

Approaches

The development of a community justice system will be an experimental process. It is to be expected that such systems will develop in different fashions in different communities. A wide range of questions must be addressed; these include who represents the community in a community system, and what are effective and acceptable sanctions. In a community-based system, different communities will develop different answers to these questions.

For example, many community justice projects involve diverting cases away from the criminal justice system towards alternative forms of dispute resolution or community service. One of the risks of this process is that it can develop into what is referred to as "net-widening"; offenders who once may have been let off with a warning are now referred to community treatment programs. The program may have a positive impact on the individual, but at the same time, resources that might have been spent on more adequately addressing issues related to a more serious offender have been expended on a minor offender.

Finally, most of the discussions that have taken place about the issue of community justice been in the context of northern or rural Aboriginal communities. It is important to address the needs of urban Aboriginal people who come into contact with the justice system, either as offenders or victims.

Community Accountability Programs

As noted above, the Manitoba government has established, in partnership with numerous community groups, 16 community accountability programs. Low-risk offenders are diverted away from the criminal justice system to these programs. The following section of this report provides a brief overview of the types of community justice programs currently in operation in Manitoba, with a focus on the First Nations Justice Strategy in northern Manitoba.

Manitoba Keewatinowi Okimakanak (MKO) First Nations Justice Strategy (Northern Manitoba)

The First Nations Justice Strategy represents one of the most promising approaches to both alleviating the problems with the circuit courts, and allowing community justice institutions to develop in Aboriginal communities.

A joint project of MKO, Manitoba Justice, and the federal Department of Justice, the program employs a community-based justice model that emphasizes community accountability. It involves two essential components: Magistrate's Court conducted on a circuit basis; and, community justice workers (CJW) who establish community justice committees and develop community-based diversion programs.

The program commenced operation in 1997 in ten communities in northern Manitoba that are served by circuit courts. The program has a Cree magistrate and a specific Crown attorney assigned to it. The magistrate and the Crown attorney hold hearings in seven communities on a regular basis, alternating with the regular circuit hearings of the Provincial Court in those communities.

The Magistrate's Court provided a number of benefits to the communities and to the justice system as a whole. Because the magistrate speaks Cree, she could ensure that the accused and community members in general were able to understand what was transpiring in the court. The magistrate also involved community members in a number of ways. In some communities, Elders and other community members were invited to speak to the court about the accused, the victim, or other related community matters. Community justice workers also attended court and provided advice to the magistrate on cases that were being decided. The Crown attorney screens files and, in conjunction with the defence and the community, can make referrals to diversion programs. The magistrate is able to refer matters to community diversion and treatment programs on disposition, take guilty pleas in those areas for which a magistrate has jurisdiction, remand cases to Provincial Court, and set trial dates.

Broadly speaking, a magistrate has the authority to take guilty pleas and pass sentence on federal, provincial, Indian Act, and band bylaw offences that are deemed to be of lesser significance. Accused who plead not guilty or who are charged with more serious offences must have their cases dealt with by a judge.

The Magistrate's Court program has had a beneficial impact on the circuit courts that operate in these communities. When the Provincial Court sits in these communities, it does not have to hear the cases that have been dealt with by the Magistrate's Court. This means that the Provincial Court has more time to deal with the more serious cases that appear on its docket, which reduces delay and allows the cases to be heard in a less rushed fashion.

The community justice workers:

- attend all court sittings to provide input and to assist in screening cases for diversion
- meet with accused who are referred for a community disposition to make all arrangements
- coordinate the activities of the community justice committee
- ensure that dispositions resulting from a hearing are followed up
- collect data, and report to MKO and the justice coordinator

The program operates on a community accountability model, which requires the support of the police, the Crown, the court, the community, and the offender. The goal is to hold offenders responsible to communities and to divert less serious offenders out of the formal justice system. The referral can come from either the police, prior to the laying of a charge, or from the Crown after a charge is laid. In these cases, the matter is referred to a community justice committee, which develops an appropriate disposition. If the offender adheres to the plan fashioned by the committee, the charges (if they had been laid) are stayed. Finally, the magistrate or judge can incorporate recommendations in the final disposition if the matter does proceed to court.

An evaluation of the program by the Courts of Division of the Department of Justice concluded that the

> FNJS has demonstrated that by working in close partnership with First Nations communities, adult and youth offenders have been held accountable to their communities in a manner that empowers communities and promotes satisfaction with the justice system. In addition, court delay has been significantly reduced and culturally appropriate services were provided as a

> cost-effective alternative to Provincial Court. (*The First Nations Justice Strategy Evaluation Report*, page 21)

The evaluation did, however, identify a number of concerns. In several communities, there was a high turnover rate among the community justice workers and concerns about the resources available to them. It was recommended that by merging the CJW position with that of Aboriginal court worker, salaries could be increased and turnover slowed. The Commission was advised that many CJWs are now also acting as Aboriginal court workers, and turnover has been lessened. There were also recommendations that the resources and training opportunities available to CJWs be increased. Finally, it was recommended that the Crown attorney position attached to the program be converted from term to permanent to ensure continuity. The Commission was also advised that this has been done.

The extensive use that community justice committees make of volunteers raises a number of problems in Aboriginal communities where unemployment rates are very high. Lack of compensation may discourage some people from becoming involved and it may cause a longer-term burnout. The evaluation recommended that "The policy regarding volunteerism associated with the community justice committees needs to be reviewed to see if it is appropriate for and supportive of the FNJS." (*The First Nations Justice Strategy Evaluation Report*, page 21)

It was also noted that the program had mixed results in involving victims; in some cases victims were reluctant to become involved in community hearings, and in other cases it appeared they had not been invited. Finally, there was a concern that in some cases those offenders who did not comply with community dispositions and had never been charged were not being charged, and, therefore, were managing to avoid taking any responsibility for their action. It was recommended that there be closer communication with the police services to ensure that non-complying offenders are dealt with through the courts.

The contingent nature of the funding for the First Nations Justice Strategy is common to many community justice projects. It depends on a renewal of support from both the federal and provincial governments to simply continue to offer its current level of support, let alone expand that service.

Other Community-Based Diversionary Programs

The First Nations Justice Strategy is not the only community-based diversionary program in Manitoba. Others include the following.

Community Conferencing Project (Portage la Prairie)

A full-time coordinator and 20 volunteer Community Justice Forum Facilitators work with adult and youth offenders, victims, and community members. They receive referrals from police, Crown prosecutors, and probation officers.

St. Theresa Point Aboriginal Youth Court

A community resource team works with Elders, traditional justice approaches, family, victims and community members. The team reviews cases and recommends community disposition, which are applied by local community members and followed up by a case manager.

Community Justice Committees

Manitoba has 80 community justice committees. Both young people and adult offenders are diverted to this program, although in the past the majority of people being diverted have been young people. The committees use such strategies as mediation, community justice forums, community service workers, and restitution to deal with conflicts and crime referral. They are supported by designated probation officers and the Justice Initiatives Fund.

Waywayseecappo Aboriginal Justice Programs

An Elders panel sits with the Provincial Court, providing advice and recommendations on sentencing. It also speaks with victims, offenders, and families in an attempt to resolve community disputes. A community justice worker is developing community-based options and expanded diversionary programs.

Mediation Services

This service is available in Winnipeg, Brandon, and Thompson. Approximately 800 cases a year are diverted to this program, through which offenders and victims meet to repair and resolve criminal matters. When the offender has completed the agreed-upon course of events, the charges are stayed.

Hollow Water Community Holistic Circle Healing Project

This program addresses sexual abuse in the Hollow Water First Nation and in the Métis communities of Aghaming, Seymourville, and Manigotagan. Local workers trained in sexual abuse intervention provide pre- and post-court intervention and assistance to victims and victimizers in cases that do not go to court.

Aboriginal Ganootamaage Justice Services of Winnipeg

This program is designed to divert Aboriginal offenders from the criminal justice system, and to integrate them into society through traditional cultural healing forms and the completion of a healing plan. Elders, traditional ceremonies and activities, and broader community involvement and participation are important components in the program.

CP1879 (Winnipeg)

Similar to the Aboriginal Ganootamaage Justice Services of Winnipeg, this program targets young people charged with criminal offences and is operated under the sponsorship of Mediation Services of Winnipeg. It uses mediation, and cultural and traditional activities and programs to resolve conflicts and crimes.

Youth Alternative Measures

This program is run by the Manitoba Government Community Corrections Branch of Probation Services, and provides formal youth alternative measures. It resolves approximately 2500 cases a year through referrals to community justice committees, and community agencies, parent action letters, community service works, and restitution.

Restorative Resolution

Operated by the John Howard Society, this program is an alternative to custody for certain offenders. Offenders must accept responsibility by entering a guilty plea and be willing to follow a community-based plan that includes a meeting with the victim, if the victim agrees, and an attempt to repair the harm caused by criminal behaviour.

John School

Operated by the Manitoba Department of Justice, the Salvation Army, and the Winnipeg Police Service, this is a program for first-time male offenders charged with Communicating for the Purpose of Prostitution.

Prostitute Diversion

Health and social workers, police, and former prostitutes provide counselling in this three-day, live-in diversion program for male and female offenders arrested for Communicating with a Person for the Purpose of Engaging in Prostitution.

Transition Program for Adults Sexually Exploited through Prostitution

This is a year-long transitional program that assists prostitutes in leaving the streets. It is operated by New Directions for Children, Youth and Family. It deals with both personal, pre-employment, and educational issues.

Positive Lifestyle Program

This is a Salvation Army diversion program that provides educational and therapeutic services in seven sessions. The program is targetted to adult offenders of both sexes.

Interlake Peacemakers Project

The objective of this project is to train a team of Ojibway peacemakers for each of the First Nations communities comprising the Interlake Reserves Tribal Council. A coordinator gives overall leadership to the project, which is designed to resolve crime and conflict in the participating communities at the pre- and post-charge stages, as well as at the post-sentence and pre-release stages.

Recommendations

The Aboriginal Justice Implementation Commission's review of the AJI recommendations dealing with community justice issues indicates that despite the progress that has been made in a number of areas, there are still real and continuing problems in the areas of delay, circuit courts, community involvement, alternative sentencing, and probation.

Progress in these areas will not come quickly. The issue of delay, for example, is multi-faceted, involving both resources (the number of judges, Crown attorneys, Legal Aid lawyers, and other court workers) and the management of those resources. It is a problem that extends across the province, and involves both Aboriginal and non-Aboriginal people. It is an area that requires ongoing attention from the government, the courts, the bar, and the community.

The AJIC is recommending a number of community justice measures that will address and alleviate delay, the problems associated with circuit courts, the lack of community involvement in the justice system, the need for alternative sentencing, and the need for culturally appropriate, community-based probation services.

The AJIC recommendations involve:

- supporting the First Nations Justice Strategy and its expansion to the remaining MKO communities, along with continued evaluation
- adopting a community justice approach, based on suggested core elements and appropriate resourcing
- adopting a public commitment to improved circuit court services, together with publication of data that will allow public measurement of progress
- moving circuit court sittings held outside Aboriginal communities to these communities where the majority of persons appearing before the court are Aboriginal
- ensuring Aboriginal delivery of probation services to Aboriginal offenders

First Nations Justice Strategy

The First Nations Justice Strategy is a successful community justice initiative that involves Aboriginal people in the court process, makes use of diversion and alternative measures, and reduces delay in the circuit courts, while allowing provincial circuit judges to devote more attention to more serious cases. An evaluation of the FNJS identified a number of areas where the program required strengthening. Among other recommendations, the evaluation recommended that, in consultation with communities, the program be expanded to other Aboriginal communities in northern Manitoba.

The Aboriginal Justice Implementation Commission recommends that:

6.1
The Government of Manitoba, in consultation with Aboriginal communities, implement the recommendations of the *First Nations Justice Strategy Evaluation Report* to expand the strategy to all other MKO communities that wish to participate.

6.2
The Government of Manitoba review its policy on volunteers working in the justice system, in particular in remote communities, with a view to ensuring, at the least, that volunteers are not out-of-pocket for expenses.

Community Justice Model

The Aboriginal Justice Implementation Commission recommends that:

6.3
The Government of Manitoba, in consultation with Aboriginal communities in southern Manitoba and the City of Winnipeg, consider whether the First Nations Justice Strategy approach would be useful in the southern parts of the province.

6.4
The Government of Manitoba establish community justice initiatives that provide for community involvement, alternative measures, and culturally appropriate services where communities express an interest in developing such a program.
Such a program should include:

- **The adoption by the Attorney General of an alternative measures policy that could provide guidance to Crown attorneys, police, and others on the types of cases eligible for alternative measures.**
- **A system to refer and to track referred cases and to ensure results are reported to the appropriate authorities.**
- **Ensuring that adequate community resources are catalogued and available to handle referred cases. Such resources may be alcohol or addiction counsellors; mediators; facilitators for various alternative approaches, such as conferencing, talking circles, healing circles, and reintegration circles; community justice workers or probation officers to supervise restitution, etc.**

Commitment to Improved Circuit Courts

The Commission recognizes the need to improve circuit court services. Many of the AJI recommendations, such as case-flow management, scheduling improvements, early attendance by lawyers in the location to ensure proper preparation of cases, and the involvement of communities in the process, should have the effect of improving the system. The Commission was informed that a number of recommendations have been enacted, but have not provided a significant improvement. For example, in a number of communities, lawyers arrived in the community the day before the court hearing. However, their clients did not arrive in the community until the day of the hearing itself. As a result, there was no improvement in the efficiency or effectiveness of the court.

The information the Commission has received indicates that individual approaches have not worked, and that a more concerted approach is required. The issues are complex, and responsibility is divided among judges, Crown attorneys, defence lawyers, court officials, police, and, perhaps, others. These different and independent groups need to work together, without sacrificing their own independence, towards the goal of improved service delivery to the public.

The Aboriginal Justice Implementation Commission recommends that:

6.5
Service indicators be developed for each circuit court by the Department of Justice. These indicators might include some or all of the following:

- **Number of matters on a docket**
- **Number of remands**

- **Number of remands per case**
- **Number of guilty pleas**
- **Number of trials**
- **Total time of sitting**
- **Average or median time from charge to trial for each court location**

This data should be collected for each sitting of court in each location, and published on the department's website.

The department should indicate what it considers to be minimum service standards for Winnipeg and locations outside Winnipeg. The department and the Judiciary should then commit to meeting these standards.

Where the standards cannot be met, the department should be required to explain why it is unable to meet the standards.

The adoption of these standards would promote fairness and equity in the administration of justice in the province.

Local Court Sittings

The Aboriginal Justice Implementation Commission recommends that:

6.6

The Government of Manitoba, in consultation with the appropriate First Nation governments, work to establish circuit court sittings on the Sandy Bay, Peguis, Sagkeeng, and Little Saskatchewan First Nations, should these First Nations desire this. This option should be offered to other First Nations whose members constitute the majority of persons appearing in a circuit court held near, but not on, the particular First Nation. Implementing this option will require negotiating appropriate agreements to ensure acceptable and continuing service, and to address concepts of community participation.

Probation Services

The Commission agrees with the findings of the Aboriginal Justice Inquiry that for probation services to be effective, they should be provided by individuals who are familiar with the community, understand the circumstances of the accused, and have the resources and training needed to properly discharge their responsibilities.

The Aboriginal Justice Implementation Commission recommends that:

6.7
The Government of Manitoba consult with Aboriginal organizations with a view to creating regional, Aboriginal-controlled probation services to serve Aboriginal communities.

6.8
The Government of Manitoba seek to increase significantly the number of Aboriginal probation officers so that probation services to Aboriginal offenders are delivered primarily by Aboriginal probation officers.

The Commission has been advised and believes that enhanced Aboriginal participation in probation services will assist in implementing a community justice approach, which can more effectively manage community sanctions for those offenders for which such sanctions are appropriate and assist in reintegrating offenders that have been incarcerated. This will also reduce the prospect of probationers offending again.

The Portage Correctional Institution

The Aboriginal Justice Implementation Commission has focussed its attention on community justice and community development initiatives. The Commission gives priority to measures that reduce the use of incarceration and that encourage correctional program service delivery in communities. Given these priorities, the AJIC has not developed a set of recommendations on Manitoba correctional institutions. However, the condition of the Portage Correctional Institution requires comment. In its 1991 report, the AJI stated:

> The Portage Correctional Institution is the province's only correctional institution for women. We believe the institution is an inappropriate facility for women and should be closed. In its place, we recommend the establishment of co-correctional facilities and community houses where female offenders can be required to live. These homes should exist in Aboriginal and in urban communities. Counselling and job-related training should be available in the home and in the community. The inmate should be able to attend school or work during the day, returning to the home for counselling and to stay at night. (AJI, Volume I, page 501)

The AJI recommended that:

- The Portage Correctional Institution be closed.

Ten years later, the facility remains in operation. This is a shameful state of affairs that should not be allowed to continue. The AJI recommended that the women in the Portage Correctional Institution be moved to either community custody or the Milner Ridge Correctional Institution. The AJI's recommendation to make Milner Ridge a co-correctional facility may not be appropriate, given the fact that it is currently devoted to domestic violence offenders. This does not lessen the obvious point—the Portage Correctional Institution, an inadequate facility, must be closed.

The Aboriginal Justice Implementation Commission recommends that:

6.9
The Portage Correctional Institution be closed.

6.10
The Government of Manitoba establish a new correctional facility for women that provides them with adequate treatment, training, and cultural and spiritual supports, and provides the greatest possible number of opportunities for community integration.

Chapter Seven

Policing

The AJI and Policing

The relationship between police services and Aboriginal people was central to the Aboriginal Justice Inquiry. The AJI itself was established in the wake of the controversy that surrounded the fatal shooting of J.J. Harper by a Winnipeg Police Department officer in 1988. Issues of racism, cultural sensitivity, and accountability all emerged during the course of the AJI hearings. As a result, the AJI made an extensive number of recommendations in the area of policing. These recommendations on policing were based upon seven core principles:

- The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.
- The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.
- A significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.
- A significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they were assigned.
- Major improvements to the *Provincial Police Act* and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.
- The development of Aboriginal police commissions to support the rapid recruitment, training and effective support of Aboriginal police forces.
- The development of an effective public complaints body to hear all complaints concerning police.

The AJI concluded that in Manitoba, Aboriginal people "believe they are being provided with inappropriate levels and quality of policing. The most frequent complaints were that police force members are not in touch with the culture and needs of the Aboriginal communities they serve. Many communities feel that service is unavailable when needed. Aboriginal people see a large gap between the community and the police, a gap which cannot be bridged as long as the community is unable to exert some control or guidance over the police who are present in it." (AJI, Volume I, page 595)

The AJI report stated that Aboriginal people experience both under- and over-policing. The issue of over-policing arose from evidence of Aboriginal people being stopped on the streets and questioned about their activities, being charged with more offences than non-Aboriginal people as a form of harassment, and being kept in custody in situations where a non-Aboriginal person may not have been kept in custody. The issue of under-policing arose from situations in which Aboriginal people came to the conclusion that police only came to their communities to make arrests. In many Aboriginal communities, police were seen as a remote and foreign authority. These concerns led to support for measures that refocussed policing away from what the AJI Commissioners viewed as a narrow approach to policing, to a broader, community-based and community-controlled approach.

Police Forces in Manitoba in 1991

In 1991, when the Aboriginal Justice Inquiry report was released, policing services in Manitoba were provided by a number of different agencies. Winnipeg, Brandon, and eight smaller communities had their own police forces. According to the AJI report:

> In a minority of reserves, Aboriginal police forces, such as the Dakota Ojibway Tribal Council Police Force, or "special" RCMP constables provide limited police services. In these communities, major crimes are investigated by the RCMP. Northern community constables provide services to Métis areas, with the RCMP providing back-up services for major crimes. (AJI, Volume I, pages 608-609)

Under its contracted role as the provincial police force, the RCMP provided police services to the rest of Manitoba. The AJI stated that in Manitoba there was no case where an Aboriginal community had full control over policing and provided a complete range of police functions to all its community members.

The AJI's comments on the Provincial Police Act

The Aboriginal Justice Inquiry report raised a number of important concerns about the Provincial Police Act. The AJI report concluded that:

> Manitoba compares poorly with other western provinces in its regulation of police activities. Each of these other jurisdictions has an Act which provides, among other things, clear definitions of relevant terms, limitations on the terms of appointment of police commissioners, powers to make regulations, powers to set and enforce wide-ranging standards for the selection and training of constables and the equipping of police forces, the establishment of a police training facility. Manitoba's Act provides few of the specific details of similar acts in those provinces, and no regulations currently exist to actually enforce the standards which the Act implies, but does not define.
>
> The present lack of a clear mandate and the absence of relevant regulations in regard to police appointment, training and supervision create a potential danger to the security of Manitobans, particularly in areas not served locally by the RCMP. Three different Acts may be involved in the empowerment of any one officer. The confusion in regard to the source, scope and validity of the police powers of band and municipal constables is unacceptable. (AJI, Volume I, pages 624-625)

While the Manitoba government has jurisdictional responsibility for policing, it has only a very limited ability to affect the operating policies and practices of the various Manitoba police departments. A Manitoba Police Commission would provide the government with one tool to influence policing policies and practices. The AJI report stated that a major revision of the Provincial Police Act was vital to providing an appropriate framework for the Manitoba Police Commission and for any Aboriginal police forces or commissions.

The AJI's Comments on Public Complaints

The AJI was also critical of the structures that existed for handling public complaints about policing in Manitoba. It concluded that the Law Enforcement Review Agency (LERA) was not as effective as it needed to be because:

- the authority of the Law Enforcement Review Board was too restricted
- the authority of the Law Enforcement Review Commissioner was too broad
- the standard of proof was too stringent
- the penalty procedures were too limited

The Law Enforcement Review Agency's resources were not sufficient for the investigation and resolution of complaints in a timely manner.

The AJI report also judged the RCMP's Public Complaints Commission process to be lacking in both independence and transparency.

The AJI Recommendations:

The AJI policing recommendations can be roughly sorted according to the seven principles that the AJI report enunciated. In the following section the principles are stated, then followed by the appropriate AJI recommendations.

The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.

- Police forces adopt a community policing approach, particularly in Aboriginal communities.

The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.

- As soon as possible, Aboriginal police forces take over from the RCMP the responsibility for providing all police services in Aboriginal communities.
- The RCMP support the establishment of Aboriginal police forces and develop a policy of cooperation with such forces.
- The Dakota Ojibway Tribal Council Police Force be provided with sufficient resources so that it can increase staff training and development in modern police methods, and gradually assume full responsibility for all law enforcement duties within its geographic jurisdiction.
- Aboriginal communities be encouraged to form regional police forces and regional police commissions following the model of the Dakota Ojibway Tribal Council Police Force. These should be established under Aboriginal control and management.
- Métis and non-status communities consider the development of a regional police force, with a police commission.

A significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.

- Police forces immediately institute employment equity programs to achieve Aboriginal representation equivalent to the Aboriginal proportion of the Manitoba population.
- New targets be set by the RCMP to bring appropriate numbers of Aboriginal men and women into the force as full officers more quickly than is currently contemplated.
- The RCMP employ Aboriginal police and civilian staff in their detachments in proportion to at least the Aboriginal population of the province and preferably in proportion to the Aboriginal population being served.
- The Winnipeg Police Department prepare and table with the city council and the Minister of Justice, no later than December 31, 1991, an employment

equity plan which has clear targets, target dates and remedies should targets not be achieved.

- The City of Winnipeg Police Department set an initial target of 133 Aboriginal police officers. The first step in reaching that goal should be to designate the next recruiting class as entirely Aboriginal. Thereafter, 50% of each recruit class be dedicated to Aboriginal recruits until the target has been met.
- The Winnipeg Police Department be required to report publicly the progress of its employment equity program to the Minister of Justice.
- A portion of the funding provided by the Province to the City of Winnipeg for police salaries be conditional on the Winnipeg Police Department's using that funding only for the hiring of Aboriginal police officers.
- The assignment of Aboriginal police officers not be restricted to the core area or other Aboriginal areas of the city of Winnipeg
- The Winnipeg Police Department no longer rely on the grade 12 educational criterion for police recruitment and develop approaches which more appropriately test recruits' ability to perform the functions required of police officers.
- The City of Brandon Police Department prepare and table with Brandon City Council and the Minister of Justice an employment equity plan no later than December 31, 1991, which will increase the numbers of Aboriginal people on the City of Brandon Police Department to a level equal to their proportion of the Manitoba population. The plan should include target dates by which to achieve that proportion and remedies should those targets not be met.
- The City of Brandon Police Department set an initial target of nine Aboriginal police officers and that the Brandon City Police dedicate that number of positions for Aboriginal recruits in its next recruit class.
- Both the City of Winnipeg Police Department and the City of Brandon Police Department consider hiring Aboriginal police officers who already have policing experience with an Aboriginal force or with the RCMP.
- Aboriginal people be represented among the civilian members of both the City of Winnipeg Police Department and the City of Brandon Police Department in the same proportion as their presence in the province's population.

A significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they were assigned.

- Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.
- All police officers be rotated through cross-cultural education programs, and periodic refresher programs be provided as part of the regular professional development programs of all police departments.

- Any police recruits displaying racist attitudes be screened out of training, and police officers who display such conduct after joining the force be required to take further training or, if necessary, be formally disciplined or dismissed.
- The courts adopt the Anunga Rules of Australia, as rules of the court governing the reception into evidence of statements to police made by Aboriginal persons.
- In addition to these rules on interrogation procedures, there are other procedures police should adopt. In our report on the death of J.J. Harper, we discuss and make recommendations concerning the recording of interrogations. Those recommendations are:
    - All statements taken by police officers be either audio- or video-recorded. If the contents of a transcribed statement are challenged, or some tribunal wishes to hear how certain words were expressed, the tape or video can be played.
    - Video equipment be used to record the statements of all suspects in cases involving deaths and other serious cases. We suggest that the taping record the totality of each interview, including all introductory comments and explanations and warnings given by the police, and including any formal statement or other comments that result.
    - The videotape will be of great value. The impact would be reduced if accused persons could allege that promises or inducements were offered or pressure was applied to them before the taping began.
    - Where video equipment is not available, all statements be audio-recorded. The RCMP has tape-recorded some statements for years. We recommend that all police make that practice mandatory in all cases, with the use of video where statements are taken in an office with that equipment.
- While they continue to police Aboriginal communities, the RCMP and all other Manitoba police forces develop and make public an integrated strategy to strengthen their capacity to provide culturally appropriate policing services, and the strategy include the development of a process of regular communication with Aboriginal organizations and communities, and the annual publication of reports which indicate progress in meeting the goals of the strategy.
- The City of Brandon Police Department, in cooperation with the Brandon Friendship Centre, develop a program to reach out to and inform Aboriginal people living in Brandon about policing issues.

Major improvements to the Provincial Police Act *and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.*

- The Provincial Police Act make explicit provision for the recognition of any police commission or committee which is established to provide police services in any municipality, unorganized territory, or Aboriginal community in Manitoba.

- The Manitoba Police Commission prepare and enforce a wide range of regulations covering recruitment, training, equipment, procedures, supervision of, and support for, police forces in Manitoba.

The development of Aboriginal police commissions to support the rapid recruitment, training and effective support of Aboriginal police forces.

- The Provincial Police Act be amended to provide for the establishment of a provincial Aboriginal Police Commission with authority to prepare and enforce a wide range of regulations covering recruitment, training, equipment, procedures, supervision of, and support for, Aboriginal police forces in Manitoba.
- Final decisions concerning the size, composition and manner of appointment to the Aboriginal Police Commission be made by Aboriginal people.
- The Provincial Police Act be amended to provide for the appointment of an Aboriginal Police Commissioner, to serve the Aboriginal Police Commission, with any such person being selected by Aboriginal organizations responsible for Aboriginal police forces.
- Agreements be developed between the provincial Aboriginal Police Commission, local police commissions, the RCMP and the provincial Justice department for Aboriginal police forces to provide full police services to Aboriginal communities, with a firm timetable for achieving this goal, including training, equipping and supporting the local forces with appropriate back-up services as required.

The development of an effective public complaints body to hear all complaints concerning police.

- The Minister of Justice establish a plan of action to deal with any incident where possible criminal acts are alleged against the police, or where a person dies or suffers serious injury in an incident involving a police officer.
- This plan of action include either the creation of a standing special investigations unit, or a plan to quickly assemble a special investigations team for a particular incident, able to take control of the investigation immediately following report of the incident. The unit or team should not include officers from the police department under investigation. The plan should include independent counsel to give advice concerning the laying of criminal charges. This counsel should not be a Crown attorney. The unit or team should report directly to the Minister of Justice.
- The police forces in the province be required to provide all available assistance and cooperation to the special investigations team.
- The Law Enforcement Review Board be reconstituted and the Law Enforcement Review Act be amended to approximate the Ontario model.
- The board appoint independent counsel to have conduct of each case and be responsible for presenting the evidence.
- Where the complaint is from an Aboriginal person, at least one member of a panel be Aboriginal.

- The test to be applied by the board be proof by clear and convincing evidence, rather than beyond a reasonable doubt.
- If the board decides that the complaint is proven, it have full power to impose whatever penalties it deems appropriate.
- In addition to what is now in Law Enforcement Review Agency reports, the agency report annually on the nature of complaints, how many were found to have merit, how many were dismissed and the type of penalty applied.
- Police officers, including the officer against whom the complaint is made, be compellable witnesses.
- Aboriginal justice systems establish and maintain an agency to receive, investigate and resolve complaints against Aboriginal police officers similar to what we recommend for provincial police forces.
- Complaints against the RCMP in Manitoba, when acting as a provincial police force, be investigated and heard by the Law Enforcement Review Board.

Policing Trends

Before reviewing the progress that has been made towards implementing the Aboriginal Justice Inquiry's recommendations on police, it useful to take note of a number of important contemporary trends in policing in Canada.

Costs: The cost of policing has been growing, over the past two decades, at a pace that has required governments across Canada to take measures to limit the rate of growth in police budgets. The increases in costs have been driven by a number of factors: wages, technology, and increases in public expectations.

Funding: Over the last decade, governments have slowed the growth in spending on police, often by reducing the number of police officers per capita.

Regionalization: One of the strategies that governments have adopted in an effort to reduce police budgets is regionalization. By merging smaller police departments, it is hoped that economies of scale can be achieved.

Staffing: It is expected that most police forces will experience a high rate of retirements over the next five years. This is likely to create problems in recruiting and training.

Crime: While there has been a decrease in crime rates in recent years, the crime rates have not declined to the levels they were at in the 1970s. Without significant socio-economic changes, many communities will continue to experience serious, and possibly increasing, crime rates.

Services: Budgetary pressures are leading police forces to focus more intently on the delivery of core services (crime suppression), with an increasing expectation that the community and or the private sector will take on a greater portion of what was once considered the role of the police.

Governance: Concerns over costs have led to changes in governance. Increasingly, the police are seen as another branch of the public service, and subjected to similar forms of measurement, monitoring, and comparison to other services. This process challenges the traditional independence of the police.

Family violence: In response to pressure from victims and women's groups, there has been a growing movement to criminalize family violence. This has led to an increase in both charges and prosecutions related to family violence. (The issue of family violence will be explored in detail in Chapter Nine.)

Community policing: While the idea of community policing has received a great deal of attention over the past two decades, there is no single definition as to what it constitutes. Many police forces have formally committed themselves to community police approaches, but they are often add-ons to traditional approaches. Such initiatives are vulnerable to budget cuts and are, potentially, at odds with the other policing trends that have been identified.

Implications for Aboriginal Communities and Aboriginal Policing

In large measure, the trends identified above often run counter to the spirit of the Aboriginal Justice Inquiry recommendations. The AJI favoured community policing, the creation of Aboriginal police forces, and affirmative action hiring policies in non-Aboriginal forces.

The evidence presented to the AJI favoured an approach to policing that provided a high level of traditional police services, and an innovative community policing approach that dealt with issues such as public order and dispute resolution.

At least in the short-term, the establishment of community-based Aboriginal police forces is going to incur a number of cost increases. Start-up costs—in terms of both training and acquisition—will be considerable. Even if Aboriginal forces are organized on a regional basis, the economies of scale may be limited. It may well be that this process will lead to an increase in staffing (indeed, such an increase might be required simply to provide many small and remote communities with adequate policing under current policing models). Furthermore, it is not appropriate to expect new models of policing, such as community policing, to be both innovate and inexpensive.

The expected staff turnover in traditional police forces will create more employment opportunities for Aboriginal people. However, it may well be the case that Aboriginal officers will leave Aboriginal forces to take positions with urban and national police forces when job openings occur, since the urban and national forces offer better pay and more career opportunities. This could only increase the staffing problems experienced by Aboriginal forces, which currently have higher than average turnover rates.

The pressure to standardize police governance at higher levels may also result in conflict with desires for more community control over policing.

As a concluding note, it is important to acknowledge the legitimacy of the views expressed by the Aboriginal community. Unless there is a new approach to justice and policing, the rates of criminalization of Aboriginal people are likely to remain high. Local knowledge and an understanding of local culture are crucial to improvements in policing in Aboriginal communities, but this knowledge may not be valued in a modernized and regionalized police service.

Status of the AJI Principles in 2001

Given the time constraints placed on the Aboriginal Justice Implementation Commission, it has not been possible to conduct an in-depth investigation into the current state of relations between Aboriginal people and the police in Manitoba. The AJIC did commission a survey paper by University of Manitoba criminologist Dr. Rick Linden, who also prepared background materials for the Aboriginal Justice Inquiry. Linden's paper (which was prepared with the assistance of professors Donald Clairmont and Chris Murphy) was posted on the AJIC website and circulated for discussion. It forms the basis for the AJIC's following assessment on the degree to which the AJI policing recommendations have been implemented.

1. The adoption of Aboriginal community-based policing as the favoured strategy for policing in all Aboriginal areas.

Progress in this area has been slow. Community policing remains a poorly defined, if widely embraced, concept. In Manitoba, the Royal Canadian Mounted Police has a community policing program that involves the formation of community consultative groups, supporting restorative justice initiatives, and creating advisory groups with representatives from the Aboriginal community. In Manitoba, there are 97 such advisory groups in 44 Aboriginal communities.

The Winnipeg Police Service's community policing program operates in several Winnipeg communities that have large Aboriginal populations. Elements of this program include an Aboriginal Liaison Officer and a 14-member Aboriginal Advisory Committee.

Members, of the police service are also active with a number of community groups, including the Aboriginal Coalition of Winnipeg, the Manitoba Aboriginal Youth Career Awareness Committee, Winnipeg Native Alliance, and Aboriginal Ganootamaage of Winnipeg.

Despite these positive steps, and an institutional commitment to community policing, it is acknowledged that community policing remains as much a goal as a reality in Manitoba.

2. The development of professional, fully trained, regional Aboriginal police forces, reporting to and serving Aboriginal communities, with a broad mandate for law enforcement and crime prevention.

Little progress has been made in implementing the recommendations relating to Aboriginal policing. The Dakota Ojibway Tribal Police Service (DOPS) remains the only Aboriginal police force in Manitoba, and it provides service to six of the eight communities that it serviced in 1991.

The Manitoba Keewatinowi Okimakanak has completed a Framework Agreement with the federal and provincial governments to establish a Police Consulting Group. This may lead to a regional Aboriginal police service for northern Manitoba. Chemawawin First Nation, Swan Lake First Nation, and Waywayseecappo First Nation operate under the terms of the tripartite RCMP-First Nation Community Police Service (FNCPS) agreement, and are policed by members of the RCMP.

3. The significant strengthening of employment equity programs, particularly in the case of the Winnipeg and Brandon police forces, including targets and remedies.

In this area both the Winnipeg Police Service and the RCMP have made significant progress. In his paper for the AJIC, Linden provides the following summary of Aboriginal employment by these two services:

> There has been significant progress in hiring Aboriginal staff, particularly by the RCMP and the Winnipeg Police Service. The RCMP have added an Aboriginal sergeant as a Career Manager in the Staffing Branch to help with Aboriginal recruiting and personnel management. The RCMP has 108 Aboriginal members in the province (about 11% of the total number of officers and nearly 20% of those assigned to contract policing), 11 of whom hold supervisory ranks. Twenty-one of the province's 97 detachment clerks are Aboriginal. The RCMP tries to ensure that Aboriginal communities have Aboriginal police officers, but must also ensure that Aboriginal members have the same transfer and professional opportunities as other members. Since 1993, the RCMP has run an Aboriginal Summer Youth Employment Plan in cooperation with Aboriginal organizations, provincial agencies, and municipal

> groups. About half the students in this program have applied to join the RCMP.
>
> Following the AJI report, the Winnipeg Police Service instituted several initiatives to increase Aboriginal hiring. While maintaining the minimum standard of Grade 12 or G.E.D. equivalency was maintained, the Winnipeg Police Service established three programs to train Aboriginal and visible minority candidates As a result, the Winnipeg Police Service now has 100 Aboriginal officers compared with 18 in 1990. This is 8.5% of the total complement of 1,174 members. The department also developed an Employment Equity Policy in 1996. The WPS has been less successful in hiring Aboriginal civilian staff and only 2.3% of civilian staff are Aboriginal. Future employment equity programs will target civilian staff. (Linden et al., page 16)

While the Brandon Police Service has an employment equity program, its increase from two Aboriginal officers to four over the past decade is less encouraging than the increases of either the Winnipeg service or the RCMP.

4. The significant expansion of the availability and quality of cross-cultural training and field experience, including processes for the orientation of new staff to the Aboriginal communities to which they are assigned.

The province's three major police forces all have ongoing multicultural training programs. They also provide training on issues such as harassment and ethics. The courses have been reviewed by outside examiners and revised in light of their findings.

5. The development of major improvements to the Provincial Police Act and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba.

No action has been taken on these recommendations. There is no legislation addressing policing standards in the province. Furthermore, the Manitoba Police Commission was abolished. The absence of a police commission is a major weakness in Manitoba's police policy.

6. The development of Aboriginal police commissions to support the rapid recruitment, training, and effective support of Aboriginal police forces.

As noted above, there currently is no Manitoba Police Commission, let alone an Aboriginal Police Commission. A Director of Aboriginal Policing has been appointed by Manitoba Justice to provide support for Aboriginal police initiatives.

7. The development of an effective public complaints body to hear all complaints concerning police.

The changes that the AJI recommended in this area have not been fully acted upon. Instead, the Law Enforcement Review Board has been abolished; complaints that were heard by the board are now heard by a Provincial Court judge. The standard of proof under the Act has been changed and more investigators have been added. The RCMP Public Complaints Commission continues to hear complaints about its own force.

In summation, in two areas—the employment of Aboriginal people and cross-cultural training—Manitoba police forces have achieved considerable success. The AJIC commends the forces for this progress and strongly encourages their continued efforts in these important areas.

However, in the area of Aboriginal policing, community policing, and improvements in accountability and oversight, progress has been either slow or non-existent. The rest of this chapter examines these three areas.

AJIC Priorities

The Aboriginal Justice Implementation Commission has identified three priority areas in the area of policing that must be addressed. They are:

- accountability and oversight
- community policing
- Aboriginal policing

All three points are interconnected. It will be very difficult for the Manitoba government to make real progress in the area of either community policing or Aboriginal policing until it adopts a new Provincial Police Act. Such an Act ought to establish standards, appointments, governance, discipline, policy, and philosophy. It must also ensure adequate, efficient, and effective oversight. Such an Act would create a framework for progress in the areas of community policing and Aboriginal policing.

Community policing and Aboriginal policing are interconnected in that Aboriginal communities regularly have expressed a desire for community policing, and Aboriginal forces will be most effective if they make use of community policing approaches. Furthermore, as noted above, the implementation of community policing and the expansion of Aboriginal policing initiatives are both frustrated by similar trends and developments in contemporary policing.

Accountability and Oversight

The Manitoba government's failure to address the AJI recommendations on police accountability amounts to a failure to properly monitor and assess a public service. This is a clear responsibility of the Manitoba government under section 92(14) of the Constitution. Under this section, Manitoba has the authority to establish a police force with the authority to enforce provincial laws and federal criminal laws. Manitoba also has the authority to appoint, control, and discipline members of the force.

In the paper prepared for this Implementation Commission, Linden et al. state:

> For decades, police in Manitoba have had less regulation, control, and guidance than almost any other province. Manitoba has no minimum standards for selection, discipline or equipment. There are no provisions for auditing the operations of municipal or regional police departments or for standardizing operational procedures. It is possible for a person unsuited for police work to be hired by a municipality and to work in a department that has no adequate policy and procedures manual to guide the officer's conduct. (Linden et al., page 43)

As the AJI noted, the Manitoba Police Commission had broad powers that included:

- preventing crime
- providing information, advice, and research to assist municipal police
- maintaining standards for lock-up facilities
- assessing the quality of municipal police forces
- recommending selection, training, and promotion standards
- recommending province-wide training programs including recruit and advanced training
- developing post-secondary educational programs for police
- establishing community relations programs
- regulating equipment for police forces
- performing quasi-judicial functions, including those established by the Law Enforcement Review Act

The AJI concluded that the Manitoba Police Commission was severely underfunded and did little more than fulfill its quasi-judicial functions under the Act. Since the Commission was abolished in 1992, the Law Enforcement Services Branch has been responsible, on paper, for the tasks previously assigned to the Commission. However, in large measure, the branch has not taken on this role.

The AJI called on the Manitoba government to make "Major improvements to the *Provincial Police Act* and Regulations, and in the role and function of the Manitoba Police Commission, to properly support the development of standards and procedures to guide all aspects of policing in Manitoba." (AJI, Volume I, page 594) The AJIC fully endorses the need to take action in this area.

One of the issues that led to the creation of the AJI was the shooting death of J.J. Harper. Considerable attention was devoted, both prior to the establishment of the AJI and during its hearings, to the rapid internal review that the Winnipeg Police conducted into that death. There was a concern at the time that in matters such as this, police forces should not be investigating themselves. For this reason, the AJI proposed a method of outside review for all police forces in Manitoba. However, little has been done to address this issue. The AJIC believes, with the AJI, that it is necessary for the provincial government to establish an effective and independent oversight mechanism.

Community Policing

As noted earlier, community policing is a widely embraced, but often vaguely defined, approach to policing. For this reason it is not a simple matter to say whether a police force has or has not implemented a community policing approach. It is apparent that moves to implement community policing have the potential to run counter to many other contemporary policing trends, particularly policies that focus on core services, regionalization, and centralization. Aside from the various trends that run counter to the implementation of community policing, it should be noted that police training itself focusses in large measure on traditional criminal justice approaches to crime prevention that tend to delegitimize alternative approaches.

The Aboriginal Justice Implementation Commission associates community policing with the following elements, which Linden et al. identified as being necessary in a meaningful community policing program.

> **Community involvement in decisions about policing**. The community members who receive police services should help set policing priorities and influence the policies of police departments. The police should not just have a one-way relationship with their communities. They must develop institutionalized ways of consulting with their communities and they should actually *listen* to what the communities say. A common failing of community policing has been a reluctance of the police to give the public meaningful input into police priorities.

> **Decentralized management.** Communities and neighbourhoods vary widely and policies that are appropriate in one area may not work in another. In recognition of this diversity, a community policing program should assign responsibility and authority to the police at the local level. This means that officers must be trained to handle this responsibility and authority and must be held accountable for their work.
>
> **Problem orientation.** Problem-oriented policing means that police are encouraged to work with the community to solve local problems rather than just focussing on enforcement. In addition to their traditional task of reacting to calls for service, the police work with the community to identify and to resolve the community problems that underlie the service calls. This proactive, preventive approach has great potential in some Aboriginal communities where social and economic problems lead to high levels of calls for service. (Linden et al., page 30)

Community policing approaches mesh with the approaches that Aboriginal communities wish to see taken on justice issues, they fit with Aboriginal concerns over self-government, they adapt to community variety, and they bridge the gaps of culture and class that currently separate police and Aboriginal people. For these reasons, the AJIC believes it is important that governments and police services continue to work together towards the implementation of these policies.

However, the AJIC also recognizes the numerous barriers and countervailing forces that police services face when they attempt to implement such a policy.

Aboriginal Policing

The lack of progress that has been made in Manitoba in the development of Aboriginal police forces must be viewed in the context of national policing trends in this area. In 1992 the Government of Canada approved a First Nations Policing Policy (FNPP). This policy transferred Aboriginal policing from Indian Affairs to the Solicitor General. The government committed itself to negotiating agreements with First Nations and provincial governments under which the federal government and the province would pay for the costs of on-reserve policing, although First Nations governments had the option of topping up funding to provide additional services. The intent was that the police services that were to be developed under this agreement would be:

- comparable to those received by non-native communities under similar conditions
- subject to significant First Nations control and direction
- responsive to the distinctive traditions and social circumstances of First Nations communities

The negotiations between the federal government, the provincial government, and the First Nation were to lead to community tripartite agreements. The agreements promoted two police service delivery models:

1. First Nations Administered Police Service: organized on a band, tribal, regional, or provincial basis, including arrangements providing for one First Nation to contract for the policing services of another.
2. Special Contingent of First Nations Officers: within an existing police service, including:
    (a) First Nations officers employed within a provincial or municipal police service with dedicated responsibilities to serve a First Nation community
    (b) a group of First Nations police officers employed through a contractual arrangement to provide a policing service to a First Nation community

In addition, the negotiations could lead to a Developmental Policing Arrangement, which was designed to smooth the transition from one type of policing arrangement to another. Provincial governments had an incentive to participate in these programs since under the new agreement their share in the funding of the policing of Aboriginal communities would drop from 70 per cent to 52 per cent. In practise, this has not led to a decline in provincial spending on the policing of these communities, since the costs of Aboriginal forces under either model have been higher than under the previous policing model.

There has been considerable progress towards implementing this policy outside Manitoba. Over 112 tripartite agreements had been signed by 1998, and almost 66 percent of eligible First Nations persons were being policed under the agreement. The policy had led to the creation of over 50 self-administered First Nations police services. Most of these forces have been created in Ontario and Quebec. In Saskatchewan there is a province-wide agreement under the FNPP.

In Manitoba DOPS remains the only First Nations Administered Police Service. Since DOPS predates the FNPP, it is not appropriate to view its creation or existence as the result of the FNPP.

Three First Nations—Chemawawin First Nation, Swan Lake First Nation, and Waywayseecappo First Nation—operate under the terms of the tripartite RCMP-FNCPS agreement and are policed by Aboriginal members of the RCMP. Furthermore, MKO is involved in negotiations with the federal and provincial government that could lead to the establishment of a regional Aboriginal force.

The fact that Manitoba has made slow progress in establishing Aboriginal police forces at a time when significant progress has been made nationally appears to be due to a number of factors. Two of the most significant are costs and issues of service delivery. While a number of provincial governments entered into First Nations policing agreements with an expectation that their costs would decline, or at least remain the same, the experience has been that Aboriginal policing is more expensive than the previous police services. Secondly, there have been a number of concerns with the level of service provided by Aboriginal services, both in Manitoba and elsewhere in Canada.

Several assessments of First Nation police services have been conducted over the past five years. They have concluded that while the policy was being implemented in terms of its overall goals (Aboriginal officers, self-administration, and the number of agreements reached), there were concerns about the conventional nature of the policing strategies pursued by these forces, their lack of resources compared to the crime levels they must address, and high public expectations.

For example, there is an expectation that Aboriginal forces provide a high quality of traditional, autonomous law enforcement. Simultaneously, there is an expectation that good policing in an Aboriginal context will go beyond crime suppression and do so in a manner that is distinctive and under community control. Aboriginal police forces are being asked to blaze a new trail in policing with resources that may not be adequate. The generic trends in policing, noted earlier in this chapter, all evolved in response to shortfalls in resources. However, many of these trends (regionalization and standardization) run counter to the thrust of Aboriginal policing. Recently, two Alberta First Nations police services closed, temporarily, while other Alberta forces are reported to be facing difficulties.

One apparent solution to the challenge of creating economically viable and culturally sensitive Aboriginal police forces is the development of regional Aboriginal police forces. This approach was endorsed by the AJI. Such forces would also have to enter into collaboration agreements with non-Aboriginal police forces. This approach has governed the growth of Aboriginal police forces elsewhere in Canada, with the Alberta government currently giving consideration to the creation of a province-wide Aboriginal force.

Aboriginal communities must play the lead role in developing these services. The Commission is in favour of an approach that provides communities with a reasonable degree of choice in determining how they are to be policed. The options currently available to Aboriginal people for policing (regional Aboriginal forces, local Aboriginal forces, continuing with the current style of policing with the RCMP, and working with the RCMP to develop a more satisfactory form of policing) should be sufficiently flexible to allow for the development of community-appropriate policing arrangements.

The process of establishing such a force should involve each Aboriginal community in a needs assessment, a thorough review of options, and ongoing monitoring and evaluation. (These issues are discussed in detail in Linden et al.) The AJIC encourages the Manitoba government to work with Aboriginal communities that express an interest in establishing Aboriginal forces, and to work with the RCMP to develop improved approaches to policing Aboriginal communities.

Another approach that might be worth considering is the creation of a Prairie Region Aboriginal Police Force, or a Prairie Provincial Police Force with an Aboriginal component. Given the pressures facing police services, noted above, prairie forces may be an answer to the need for increased efficiency and effectiveness, while at the same time bringing greater local control.

AJIC recommendations

The issues outlined in this chapter are complex. While significant progress has been made in a number of areas of policing, the issues of accountability and oversight, community policing, and Aboriginal policing, are far from resolved. The issues involve several layers of government, and the public, as well as fundamental questions of funding, policy, and governance. While the Aboriginal Justice Implementation Commission believes that progress must be made in all three areas, the Commission believes that what is required to break the current impasse is a provincial task force on policing that is mandated to make recommendations on a new Police Act for the province of Manitoba.

A systematic review of all policing issues in Manitoba, culminating in the adoption of a new Act, would ensure that all the issues and trends identified in this paper are fully examined and that appropriate strategies are developed and adopted. Such a review would undoubtedly raise and examine other policing issues that do not directly touch on the relationship between Aboriginal people and the police. Conventional law-enforcement approaches, which are being reinforced by numerous trends, must be held up to close scrutiny. This process must ensure that the proposed beneficiaries of changes in police policy have effective participation in the review process. If Manitoba is committed to community policing—and, therefore, in Aboriginal communities, to Aboriginal policing—then it may the case that a new model of policing is required for the entire province. The AJIC believes that a more transparent and independent governance system, coupled with a community policing approach that requires use of peacekeeping or restorative, community-based, policing philosophies and strategies (and that is properly funded), will create a police force that is more credible, legitimate, and effective.

Summary

It is apparent that the provision of police services in Manitoba is quite complex, involving both municipal and provincial, governments in providing services off of First Nations, and involving First Nations, provincial, and federal governments in providing police services on First Nations. In addition, the RCMP's role as the provincial police force, and federal/provincial arrangements to share the cost of the RCMP, further complicate matters.

Given the nature of the issue, the limitations in the Commission's mandate with respect to time, and the need to focus on those issues solely within the responsibility and accountability of the provincial government, the Commission has decided not to make detailed recommendations in this area. Recommendations in this area will require extensive consultation with all interested parties. The Commission will recommend parallel, short-term, and medium-term approaches. Before setting out its recommended approaches, the Commission wishes to review the conclusions it has reached in its investigations into policing issues and the Aboriginal Justice Inquiry (AJI) recommendations dealing with police.

- The Commission recognizes the efforts that the RCMP and the Winnipeg Police Service have made in increasing Aboriginal representation and in cross-cultural training. The Commission respects these efforts and strongly encourages both forces to continue their work in this area. (The Manitoba Metis Federation has suggested that the Winnipeg Police Service enter into a partnership with the MMF to promote recruiting of Métis into the force). The Commission also has been advised that a recent review of the RCMP Aboriginal Police Services recommends enhanced training of members in Aboriginal culture and Aboriginal concerns.

- The Commission agrees that there is a need for a strong legal foundation for the delivery of police services in Manitoba. The Commission notes that while Alberta conducted a review of its Provincial Police Act in 1988, a further review, by a committee of members of the Alberta Legislative Assembly, is currently in process.

- The Commission agrees that there is a need for independent oversight of police forces, particularly in cases of serious injury or allegations of criminal conduct by police officers. This need is grounded, at a minimum, in the need for the public to believe that such cases are being dealt with appropriately.

- The Commission agrees with the AJI's recommendation concerning the adoption of a philosophy of community policing. The Commission also agrees that the description offered by Linden et al. establishes a good working definition to assess community policing efforts.
- The Commission agrees that, in general, it would be preferable for Aboriginal communities to be provided police services primarily by Aboriginal officers under local Aboriginal control. (The Commission recognizes, however, that in operational matters, police forces are not subject to political control.)
- The Commission recognizes that any police service must be delivered in a cost-effective manner, and there will be inevitable tensions between the desire for locally controlled community policing and the need for efficiency.

Recommendations

Medium-Term (1 – 3 years)

The Aboriginal Justice Implementation Commission recommends that:

7.1

The Government of Manitoba initiate a process involving all stakeholders (with Aboriginal representation that includes the Assembly of Manitoba Chiefs and the Manitoba Metis Federation) to review policing issues in Manitoba with a goal of a new Provincial Police Act within three years. The review should deal with, among other things,

- **The role of the province in encouraging the adoption and delivery of effective community policing**
- **Whether current mechanisms to fund police services are equitable**
- **The role of the province in ensuring adequate and effective levels of policing**
- **Complaints and discipline mechanisms for alleged criminal and non-criminal conduct**
- **Establishing training and performance standards**
- **Crime prevention**
- **Victim services**

- **The role and responsibilities of bodies charged with providing general supervision of police**
- **The distribution of powers between municipal governments, police supervisory bodies, and the chief of police**
- **The role of the Royal Canadian Mounted Police as a provincial police force, and arrangements for provision of specialized services by the provincial police force to other forces, such as First Nation police forces and municipal forces, both RCMP and non-RCMP**
- **What, if any, legislative provisions are required to deal with Aboriginal police forces**

Short-Term (Immediate)

Ongoing work to improve the provision of police services to Aboriginal people should not stop while this review is being conducted.

The Aboriginal Justice Implementation Commission recommends that:

7.2
The Government of Manitoba and Aboriginal communities adopt a process through which Aboriginal communities could choose the most appropriate type of police structure; such a process should include:

- **A needs assessment**
- **Option assessment**
- **Monitoring and evaluation**

7.3
The Government of Manitoba work with Dakota Ojibway Police Service (DOPS) to explore ways to improve the efforts of DOPS to provide a community-based police service.

7.4
The Government of Manitoba work with the Royal Canadian Mounted Police to determine whether the RCMP is sufficiently responsive to community needs and concerns, and whether its degree of responsiveness can be improved.

Chapter Eight

Aboriginal Employment and Participation in the Justice System

The Aboriginal Justice Inquiry placed a heavy emphasis on the need to employ more Aboriginal people in every part of the existing justice system. The AJI argued that:

> because of their almost complete absence other than as accused, the system is now considered to be a foreign and uncaring one by Aboriginal people…We are satisfied that if there were Aboriginal people working in the legal system, there would be a greater understanding of the problems faced by Aboriginal accused, victims, witnesses and their families, and higher levels of assistance and advice. Aboriginal communities would benefit economically and socially from having people within their community who hold positions of importance within the justice system. (AJI, Volume I, page 663)

The AJI suggested that job descriptions for positions that required, or that will inevitably result in, high contact with Aboriginal people should place greater emphasis on the applicant's knowledge and skills in the area of Aboriginal skills and languages. It suggested that such positions should be designated as "Aboriginal Bilingual Positions" within government, much as the government now designates some positions as "Bilingual" for purposes of its French language policy.

The AJI indicated it was not impressed with the results achieved under voluntary affirmative action programs, noting that there were few consequences for managers who failed to achieve progress in hiring members of target groups under these programs. For this reason the AJI stated that the government needed to

> formally adopt legally enforceable, target driven, equity employment programs. We include all levels of the system in that conclusion, from police officers and prison guards to members of the judiciary and bureaucracy. We believe that the progress of those programs should be reported annually to an appropriate entity with powers to enforce compliance. Such an entity should have access to specific and appropriate powers. (AJI, Volume I, page 664)

The AJI recommended the creation of an Employment Equity Commission (EEC) to serve as an enforcement agency. While it placed no limit on the authority of the EEC, it recommended that its initial efforts be directed towards increasing Aboriginal employment in the justice system.

The AJI also addressed the issues of targets. It concluded that the minimum target in the justice system ought to be the percentage of Aboriginal people in the Manitoba population, while the optimum target would be the percentage of Aboriginal people served by the justice system. Since the AJI estimated that Aboriginal people constituted 12 percent of the Manitoba population, it recommended a minimum of 12 percent and an optimum that would vary with the number of Aboriginal people being served by a specific branch of government.

The AJI made the following specific recommendations dealing with employment equity.

- The Province of Manitoba legislate the establishment of an Employment Equity Commission with appropriate Aboriginal representation on its governing body.
- The Employment Equity Commission have two arms: an investigative arm responsible for examining any matter covered by the legislation, and an adjudicative arm responsible for hearing any complaint made under the legislation. Those on the adjudicative side who sit as hearing panels to determine a complaint should include an Aboriginal person if the complaint involves an Aboriginal issue or complainant.
- The mandate of the commission be:
    - To develop employment equity targets for employers within the legislative jurisdiction of the Province of Manitoba, including any department of the government of Manitoba and any municipality, town or city within the province.
    - To ensure that employers set policies and programs for the advancement and promotion of Aboriginal people.
    - To monitor compliance with established employment equity targets.
    - To require employers in receipt of government grants or contracts to establish an acceptable employment equity plan with appropriate time frames, within which Aboriginal people will be hired.
    - To hear and determine complaints against any person or employer who fails to comply with an established employment equity plan.
- Hearing panels called upon to determine complaints be entitled to make orders requiring compliance with an employment equity plan acceptable to the commission, or make such other order as may appear appropriate to it, such as financial compensation either to an individual or to a group of individuals.

In addition, the AJI made the following recommendations that address the issue of Aboriginal employment in various branches of the justice system.

Manitoba Justice Department

- The provincial Justice department establish minimum and optimum targets for the employment of Aboriginal people at all levels. The minimum target must be no less than the percentage of Aboriginal people in Manitoba; the optimum target is to be equal to the percentage of Aboriginal people served by the department and its agencies.

Legal Aid

- Legal Aid Manitoba establish minimum and optimum targets for the employment of Aboriginal people at all levels. The minimum target must be no less than the percentage of Aboriginal people in Manitoba; the optimum target is to be equal to the percentage of Aboriginal people served by Legal Aid Manitoba.

Correctional Facilities

- The number of Aboriginal people employed in correctional facilities and correctional programs be at least proportionate to the population of Aboriginal people in the province of Manitoba.
- At least one-half of the Aboriginal staff of each institution be able to speak an Aboriginal language.

Police

- Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.
- The RCMP employ Aboriginal police and civilian staff in their detachments in proportion to at least the Aboriginal population of the province and preferably in proportion to the Aboriginal population being served.
- The Winnipeg Police Department prepare and table with the city council and the Minister of Justice, no later than December 31, 1991, an employment equity plan which has clear targets, target dates and remedies should targets not be achieved.
- The City of Winnipeg Police Department set an initial target of 133 Aboriginal police officers. The first step in reaching that goal should be to designate the next recruiting class as entirely Aboriginal. Thereafter, 50% of each recruit class be dedicated to Aboriginal recruits until the target has been met.
- The Winnipeg Police Department be required to report publicly the progress of its employment equity program to the Minister of Justice.
- A portion of the funding provided by the Province to the City of Winnipeg for police salaries be conditional on the Winnipeg Police Department's using that funding only for the hiring of Aboriginal police officers.

- The Brandon Police Department set an initial target of nine Aboriginal police officers and that the City of Brandon Police Department dedicate that number of positions for Aboriginal recruits in its next recruit class.
- The City of Brandon Police Department, in co-operation with the Brandon Friendship Centre, develop a program to reach out to and inform Aboriginal people living in Brandon about policing issues.

Legal training

- The University of Manitoba Faculty of Law establish a recruitment program whereby Aboriginal students (including those in high schools) throughout Manitoba and Northwestern Ontario are encouraged to attend law school.
- The Faculty of Law and the Aboriginal Justice College establish a pre-law program for Aboriginal students wishing to enter law school.

Aboriginal Employment in the Justice System

Government of Manitoba

In 1983 the Manitoba government adopted an employment equity policy. This policy identified four target groups that, in the opinion of the government of the day, had been the victims of systemic discrimination in employment and were, therefore, underrepresented in the Manitoba government workforce. The target groups were women, Aboriginal people, visible minorities, and persons with disabilities. Under this policy the government committed to continuing to hire the most capable job applicants, but when applicants were of equal capability, the government would hire the applicant from the target group. The policy's goal was to create a civil service more reflective of the broader society; that goal would be achieved when the percentage of women, Aboriginal people, members of visible minorities, and persons with disabilities employed by the government was equal to their presence in the Manitoba population. When the program was established in 1983, its goal for the year 2003 was 50 percent for women, 10 percent for Aboriginal people, 7 percent for persons with disabilities, and 6 percent for visible minorities.

This policy has remained in place since 1983. The AJI's proposed employment equity legislation was never adopted, and the Employment Equity Commission was not created. Progress towards the government's goals has been different for different target groups. In 1987 women accounted for 45.6 percent of the civil service; in 2000, they accounted for 49.58 percent. In 1987 Aboriginal people accounted for 2.01 percent of the civil service, in 2000, they accounted for 7.3 percent of the civil service. However, when one subtracts seasonal and part-time Aboriginal employees of the Conservation Department, this figure drops to 6 percent. Persons with disabilities accounted for 2.01 percent of the civil service in 1987 and 2.5

percent in 2000. Visible minorities accounted for 2.26 percent of the civil service in 1987 and 2.84 percent in 2000.

While there has been an increase of over 100 percent of Aboriginal people within the Manitoba civil service over the past 13 years, it is apparent that the government will not reach its 10 percent goal in 2003. Furthermore, the rapid growth in the Aboriginal population over the past decade suggests that a 10 percent target may be too low in light of the government's original goals for the program.

The hiring of Aboriginal people has progressed at different rates in different departments. For example, 30 percent of Northern Affairs employees were Aboriginal in 2000, while 4.7 percent of the Civil Service Commission (the body ultimately charged with overseeing the employment equity policy) was Aboriginal. In 2000 Aboriginal people accounted for 8.53 percent of the people working for Justice, 8.8 percent of the people working for Health, and 8 percent of the people working for Family Services. Information provided by the Manitoba government in February 2001 indicated that Aboriginal people accounted for 10.4 percent of the employees in the Department of Justice. From this it would appear that Justice has achieved the employment equity targets established in 1983 and is close to achieving the AJI's minimum goal.

There are a number of potential explanations for the failure of the program to reach its overall goals. One of these is the fact that during the past decade, there has been no growth in the size of the civil service. A period of protracted restraint and devolution has created a situation where the Manitoba civil service is smaller than it was in 1987.

The continued social issues that Aboriginal communities face have also played an unfortunate role in reducing the number of potential job applicants from the Aboriginal community. Poor housing, poor infant health, and diminished educational opportunities all combine to limit the number of Aboriginal people who possess the qualifications required to compete for certain government positions. This issue is discussed at length elsewhere in this report, but it worth emphasizing that policies that focus on supporting families, young people, and communities are the needed foundation for success in meeting other goals, such as an increase in Aboriginal employment. Increase in the availability of childcare is also needed to allow Aboriginal people to participate in the labour force in greater numbers.

Once these comments have been taken into account, the fact remains that the minimum goal set by the Aboriginal Justice Inquiry ten years ago has not been attained in the Department of Justice, nor has it been attained across the civil service. Finally, it must be noted that the major AJI initiative that had been recommended for this area has not been implemented. One is drawn back to the AJI observation on the lack of consequences for failing to meet employment equity goals, and how this reflected a lack of government commitment.

Police

Manitoba police forces have experienced more success than the Manitoba government in increasing the number of Aboriginal people it has recruited and retained.

For example:

- The RCMP has 108 Aboriginal members in the province (about 11 percent of the total number of officers and nearly 20 percent of those assigned to contract policing).
- Twenty-one of the RCMP's detachment clerks are Aboriginal (about 20 percent of the total).
- The Winnipeg Police Service (WPS) has 100 Aboriginal officers (compared with the 18 it had in 1990). As a result, approximately 8.5 percent of the WPS officers are Aboriginal.
- Of the Winnipeg Police Services civilian staff, 2.3 percent are Aboriginal

The progress made by police departments, during a time when they were experiencing the same economic pressures as the Manitoba government, suggests that political will, manifested by aggressive recruiting, training, and retention programs, can lead to improved results when it comes to Aboriginal employment.

The Approach of the Aboriginal Justice Implementation Commission

The Commission is in agreement with the Aboriginal Justice Inquiry's emphasis on the need for greater Aboriginal employment in the justice system. Increased numbers of Aboriginal people employed in a system that deals with large numbers of Aboriginal people will improve the system's credibility and legitimacy among Aboriginal people. Secondly, an increase in Aboriginal people working in the justice system is the best way to ensure that justice services are being provided in a manner that is culturally appropriate. This will improve communication and understanding between those who are administering justice and those Aboriginal people who find their lives being administered by the justice system. This will render the system more efficient and more effective. It would also create role models for young Aboriginal people and, more immediately, create economic opportunities for Aboriginal persons.

The Commission recognizes that while there has been an improvement in Aboriginal employment in the justice system, the minimal goals set by the Manitoba government in 1983 and the Aboriginal Justice Inquiry in 1991 have not been met.

The question that remains is how to achieve those goals. The AJIC has reviewed literature on efforts to increase Aboriginal employment and has commissioned its own research on the topic. It is clear that a process that simply posts job notices in the traditional fashion and waits for Aboriginal candidates to apply will not make considerable progress on this issue.

Trends in Public-Sector Employment

The last decade has been a period of public-sector contraction. The Commission notes that the downsizing of the Manitoba civil service over the past decade has had a number of detrimental effects on Aboriginal people that go beyond the government's difficulties in meeting employment goals. The impacts of downsizing and restraint policies have fallen heavily on services and programs that address the needs of Aboriginal people, whether or not they are involved in the justice system. Child and family service workers, Legal Aid lawyers, public school teachers, and probation officers—to name only a few of the workers who provide crucial services to Aboriginal people—carry larger caseloads than they did a decade ago and often find themselves working with fewer resources. To the degree that they have placed more young Aboriginal people at risk of coming into conflict with the law, reduced the system's ability to aid Aboriginal people who are in trouble, and limited employment opportunities, such policies of public-sector contraction have frustrated the spirit and intent of the AJI report.

For a variety of reasons, it appears that the opportunity exists to reverse these trends. Demographics are creating the opportunity for a renewal of the public sector. It is anticipated that over the next five years, approximately 2000 positions will become available with the Manitoba government as the result of retirements (Anokiiwin Employment Solutions, page 20). Coupled with the types of investments in prevention that are described elsewhere in this report, there will be significant opportunities to hire Aboriginal people in the public sector. There is also a growing number of Aboriginal people entering the labour market each year; currently, Aboriginal persons account for one in four new members of the labour force.

Conclusion

The Aboriginal Justice Implementation Committee endorses the goals of the Aboriginal Justice Inquiry for increased hiring of Aboriginal persons. The AJIC applauds those agencies that have achieved significant increases in employment. It would appear that those improvements are the result of management's commitment to improve recruiting, enhance training opportunities, remove barriers to employment, and enhance retention. The AJIC believes these measures offer the most effective tools to increase Aboriginal employment. While there may well be merit to an enforcement mechanism, such as an employment equity commission, the AJIC is mindful of the need to invest resources in as effective a manner as possible. For that reason, the AJIC is not recommending that such a commission be established at this time.

Therefore, the Commission is not prepared to recommend a legislated employment equity act or employment equity commission. However, it does endorse the employment goals set out by the Aboriginal Justice Inquiry. These goals should guide the planning, monitoring, and evaluation of an Aboriginal Employment Strategy. The Commission also notes that Manitoba Conservation has recently adopted an Aboriginal Employment Strategy. This strategy stresses the importance of:

- creating an Aboriginal Employment Coordinator
- providing managers with training about the strategy
- using targetted programs to ensure that Aboriginal people are hired into management positions
- recruiting proactively
- setting clear targets, timelines, and accountability
- emphasizing the need for adequate resources and clear communication

Anokiiwin Employment Solutions prepared a paper for the Aboriginal Justice Implementation Commission, entitled *Aboriginal Employment Strategy* (which is available on the AJIC website), that makes many of these points, as well. The rationale for implementing such a strategy in the Justice department are as clear as they were in 1991:

- The government has committed itself to employment equity across the civil service.
- Increasing the number of Aboriginal persons employed in the Justice department (and the justice system in general) will increase the justice system's legitimacy, credibility, and efficiency.

There are, as noted above, two additional reasons why the government should act on this measure immediately:

- The pending wave of retirements in the civil service creates the opportunity to increase Aboriginal representation.
- The growing presence of Aboriginal persons in the labour market increases the opportunity to recruit and train Aboriginal employees.

Recommendations

The Aboriginal Justice Implementation Commission recommends that:

8.1

The Government of Manitoba adopt, in consultation with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation, a five-year Aboriginal employment strategy. The government must make annual reports to the public on its progress in implementing this program.

The Commission believes the employment strategy should incorporate the following elements:

- **A commitment from both the political and administrative leadership to increasing the number of Aboriginal employees in accordance with the recommendations of the AJI. This commitment must spell out political and administrative accountability, and identify and detail the appropriate financial resources. There must be goals, a timeline, and responsibility for meeting the goals within the designated time frame.**
- **A review of current employment systems to identify barriers.**
- **An increase in Aboriginal human resource capacity within government departments. This should include the hiring of Aboriginal Human Resource Officers.**
- **Formal initiatives to improve Aboriginal recruitment, retention, and advancement. This would include, but not be limited to, outreach and preparatory training; restating occupational qualifications to provide recognition of those positions for which knowledge of Aboriginal languages and culture is a qualification; culturally sensitive marketing mechanisms to recruit applicants; and monitoring of program effectiveness.**
- **A review, improvement, and expansion of the Aboriginal Management Development program.**

- **Development mechanisms to ensure Aboriginal access to career-advancement and employee-support services.**
- **Establishment of a union-management partnership to identify, address, and eliminate employment barriers within government.**

Appointments

Officers of the Court

Several important roles in the Manitoba justice system are filled by individuals who are appointees with varying degrees of independence, and are appointed through various processes. These include Provincial Court judges, magistrates, hearing officers, masters, and referees. For the same arguments advanced in the above section on the need for an Aboriginal hiring strategy, there are good public policy reasons for ensuring that a significant number of these positions are held by Aboriginal people.

The Aboriginal Justice Implementation Commission recommends that:

8.2
The Government of Manitoba make a public commitment to appoint forthwith a significant number of Aboriginal people to the positions of Provincial Court judge, magistrate, hearing officer, referee, and master.

Board and Commissions

The lives of Aboriginal people are affected by a wide range of provincial government boards and commissions. The AJIC recommends that the same hiring goals endorsed by the AJI—namely no less than the percentage of Aboriginal people in Manitoba and, optimally, a number equal to the percentage of Aboriginal people served by a department and its agencies—be applied to appointments to government boards and commissions.

The board that has the most significance in the administration of justice is the Board of Directors of Legal Aid Manitoba. The fact that a significant percentage of the Legal Aid Manitoba clientele are Aboriginal led the AJIC to write to the Minister of Justice in January 2001, recommending that "there be a significant number of Aboriginal directors."

The Aboriginal Justice Implementation Commission recommends that:

8.3
The Government of Manitoba appoint forthwith a significant number of Aboriginal people to the Board of Directors of Legal Aid Manitoba.

8.4
The Government of Manitoba adopt a policy requiring appropriate representation of Aboriginal people on all provincial boards, commissions, agencies, and other institutions.

An Aboriginal Justice College

The Aboriginal Justice Inquiry recommendations called for a significant increase in the number of Aboriginal people working in the Manitoba justice system. The Inquiry recognized that dedicated efforts would be needed to ensure a trained workforce prepared to take on these positions. For this reason, the AJI made the following recommendations:

- The Aboriginal Justice Commission establish an Aboriginal Justice College with its own Aboriginal board of directors, and staffed by Aboriginal people, to provide training and continuing education for Aboriginal people who wish to assume positions of employment within both the existing justice system and Aboriginal justice systems.
- Training provided by the Aboriginal Justice College include preparation for such positions as judges, attorneys, police officers, correctional officers, court clerks, administrators, interpreters, court workers, peacemakers, youth justice committee directors, social workers, probation and parole officers, and others, as exist within the present justice system and as are needed to establish and maintain Aboriginal justice systems.
- The Aboriginal Justice College organize courses in cross-cultural understanding for non-Aboriginal personnel.

The AJIC is also recommending a significant increase in the number of Aboriginal people employed in the justice system, and recognizes the need for specific training opportunities for Aboriginal people. Manitoba Education and Training prepared a discussion paper for the AJIC on this topic. The paper, which is available on the AJIC website, lists four options.

1. A College established by provincial legislation

An Aboriginal Justice College established under the provincial Council on Post-Secondary Education Act could:

- parallel the experience of existing institutions
- involve a free-standing physical structure
- be Aboriginally governed with a Board of Directors
- be mandated to manage, develop, and deliver accredited education and training programs
- receive base funding from the Government of Manitoba

2. An affiliated college/technical training institute

A free-standing Aboriginal Justice College could have a formal affiliation relationship with an existing college or university. The college would be:

- Aboriginally owned and operated.
- responsible for managing, developing, and delivering accredited education and training programs

Formal affiliation would address issues such as broad program accreditation, and joint development and delivery partnerships. Examples of this kind of approach in a Canadian context include the Saskatchewan Indian Federated College, which is affiliated with the University of Regina.

3. An Institute within an existing educational institution

An Aboriginal Justice Institute could operate within an existing college. Such an approach could be:

- funded as a new or base budget initiative within an existing college or university's annual budget allocation
- supported by investment from Aboriginal and other sectors of the province

This model would provide less independence in governance and autonomy.

4. A virtual Aboriginal Justice College

Under this proposal there would be no physical college. Instead, an Aboriginal Justice College or Authority could be established, with the following features:

- Aboriginal governance
- mandate to establish short- and long-term education and training objectives
- authority to broker and/or contract the services of institutional and community-based providers

- provincial funding

This type of model would involve no formal academic/educational standing. As a result, the opportunity for independent action and autonomy would arguably be somewhat reduced.

The Aboriginal Justice Implementation Commission recommends that:

8.5
The Government of Manitoba, through the Manitoba Department of Education and the Manitoba Department of Justice, work with the Manitoba Metis Federation and the Association of Manitoba Chiefs to establish an Aboriginal Justice Institute with an appropriate tripartite governance structure. The institute would use existing courses and would develop new culturally appropriate training programs to assist Aboriginal people to work in the current justice system and in evolving approaches such as community and restorative justice.

Law School

According to the Aboriginal Justice Inquiry in 1991, only ten Aboriginal lawyers were practising law in Manitoba. To address this issue, the AJI made the following recommendations:

- The University of Manitoba Faculty of Law establish a recruitment program whereby Aboriginal students (including those in high schools) throughout Manitoba and Northwestern Ontario are encouraged to attend law school.
- The Faculty of Law review the manner in which it makes use of the Law School Admission Test scores and grade point averages of law school applicants to ensure that Aboriginal students capable of successfully completing law school are not thereby unfairly eliminated.
- The Faculty of Law increase the number of Aboriginal law students it accepts into first-year law. The minimum number of students it should be accepting would be 12% of each class, the same proportion as the proportion of Aboriginal people in the general population. Entrance levels should also include an additional number to overcome historical imbalances
- The Faculty of Law engage an Aboriginal person as a member of its faculty with the primary responsibility of providing support services to Aboriginal students and with the secondary role of developing materials on, and teaching, Aboriginal law.
- The Faculty of Law undertake the development of a full credit course or courses in Aboriginal legal issues, and ensure that Aboriginal issues are included as part of the core courses taught to each law student.

- The Faculty of Law organize and sponsor a conference of law schools from across Canada, to be held for the purpose of addressing the issue of increasing the numbers of Aboriginal law graduates in Canada so as to accomplish two objectives:
- To overcome historical imbalances in Aboriginal under-representation in the legal profession.
- To establish entry levels of Aboriginal law students that will ensure that the Aboriginal presence in the legal profession reflects the Aboriginal presence in the population generally.
- The Faculty of Law and the Aboriginal Justice College establish a pre-law program for Aboriginal students wishing to enter law school.

The Dean of the University of Manitoba Law School, prior to the report's being issued, had determined that a more strategic initiative was required to increase the numbers of Aboriginal students in the law school. With this view, the faculty established a program for the recruitment and support of Aboriginal students. The Academic Support Program is in its eleventh year and has witnessed a significant increase in the number of students entering law school and graduating annually. A continuing challenge for the program is to increase the number of Aboriginal students applying to enter law school. It has only met its minimum target of 10 percent annually once in the past ten years. However, the law school has not limited the target and has accepted as many students as were qualified in any given year. A factor for the law school is that it must compete with all Canadian law schools for a limited number of students, and some students have gone to other institutions.

With regard to admissions to the law school, there has been an overall attempt to not be limited to the traditional indicators for admission. However, the Law School Admissions Test still plays a significant role in the file review of all Aboriginal students' applications. The entire admissions process continues to be a matter of discussion for many law school institutions, and is not a matter that is easily resolved.

The Academic Support Program did engage an Aboriginal person to manage the provision of support services to Aboriginal and other non-mainstream students. Recruitment of Aboriginal students is a continuing obligation of the program. However, the program has been dependent upon grants for recruiting, and various initiatives at different times have been utilized to encourage university and high-school students to attend law school. At this time, the university is attempting a new program of recruitment where all Access programs, including the Faculty of Law, have pooled resources to achieve a more sustained approach to Aboriginal student recruitment.

The Faculty of Law did have a "Native People and the Law" course for a number of years previous and subsequent to the AJI's report. A new course, entitled "Aboriginal People and the Law - Land Claims," has been added in the past three years. Both courses are taught by the director of the Academic Support Program at this time. As well, a number of professors have and continue to include major components dealing with Aboriginal people and the law in their courses.

A conference of all law schools, for the discussion of increasing the numbers of Aboriginal students, was held in 1991. The meeting did initiate an annual meeting of all law schools for a number of years to discuss diversity and recruitment of indigenous and non-mainstream students.

Culturally Appropriate Services

The Aboriginal Justice Inquiry made two recommendations related to the provision of culturally appropriate spiritual services in Manitoba correctional facilities. Specifically, the report recommended that:

- Correctional institutions develop a policy whereby elders recognized by provincial Aboriginal organizations as capable of providing traditional assistance or spiritual advice and counseling to Aboriginal inmates in a culturally appropriate manner, be granted status equivalent to chaplains under the Chaplaincy program of the Corrections Branch.
- The Correctional Services of Canada and the Corrections Branch of the Manitoba Department of Justice institute a policy on Aboriginal spirituality which:

    a) Guarantees the right of Aboriginal people to spiritual services appropriate to their culture.

    b) Recognizes appropriate Aboriginal organizations to provide Aboriginal spiritual services.

    c) Provides training for correctional staff on Aboriginal spirituality, on the relative importance of such services to Aboriginal people, on the different practices and beliefs likely to be encountered, on how those practices and beliefs can and should be accommodated by correctional staff and on how to handle traditional items of spiritual significance to Aboriginal people.

    d) Provides for the hiring of knowledgeable personnel within each institution who can advise corrections staff on how to deal with cultural issues arising within the institution's Aboriginal population.

    e) Provides for the attendance of Aboriginal inmates at spiritual ceremonies outside jail.

The Aboriginal Justice Implementation Commission has been informed that these recommendations have been acted upon. However, the Manitoba Metis Federation has communicated to the AJIC that the MMF has not been involved in any culturally appropriate programming in correctional institutions, and that the Elders and cultural workers in provincial institutions are largely First Nations people.

The Aboriginal Justice Implementation Commission recommends that:

8.6
The Government of Manitoba solicit the views of the Manitoba Metis Federation and the Assembly of Manitoba Chiefs to ensure the appropriateness of spiritual and cultural programming in correctional institutions.

Cross-Cultural Training

The *Report of the Aboriginal Justice Inquiry* stated that:

> Most people in the justice system have little understanding of Aboriginal people, their history, culture, or way of life. Our study has convinced us that there are widespread misconceptions about Aboriginal people and about their perception of the law and the legal system. (AJI, Volume I, page 660)

In response to this situation, the AJI recommended that cross-cultural training be provided to give non-Aboriginal people a better understanding of Aboriginal communities and cultural values. Specifically, the AJI recommended that:

- Cross-cultural training programs be mandatory for all non-Aboriginal probation staff, and that there be an ongoing series of refresher courses.
- Cross-cultural training programs and ongoing refresher courses be mandatory for all corrections staff.
- Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.
- All police officers be rotated through cross-cultural education programs, and periodic refresher programs be provided as part of the regular professional development programs of all police departments.
- Federal, provincial and municipal governments, individually or in concert, with the assistance and involvement of Aboriginal people, establish formal cross-cultural educational programs for all those working in any part of the justice system who have even occasional contact with Aboriginal people.
- Cross-cultural education components of all police training courses be reviewed and strengthened, and this process actively involve members of the Aboriginal community, resource persons and recognized experts.

The AJIC has been informed by the Manitoba government that there has been a significant increase in cross-cultural training. Manitoba Justice, the Winnipeg and Brandon police services, and the Royal Canadian Mounted Police all provide cross-cultural training. In addition, the Manitoba Civil Service Commission has developed a number of cross-cultural courses available to all government employees. They include "Walk a Mile in my Moccasins", "Communicating with Aboriginal People", and "Cultural Diversity". All these programs are geared to non-Aboriginal personnel to assist them to gain a better understanding of Aboriginal peoples.

These measures play an important role in ensuring that Aboriginal people who come into contact with the Manitoba justice system are treated in an appropriate manner. Secondly, they are crucial elements in any Aboriginal employment strategy, since the retention of Aboriginal employees depends in large measure on the workplace climate.

The Aboriginal Justice Implementation Commission recommends that:

8.7
The Government of Manitoba continue at all levels of government to employ cross-cultural training programs and to conduct regular evaluations of the effectiveness of such training.

8.8
The Government of Manitoba adopt a policy that prefers Aboriginal people to deliver cross-cultural training programs.

Chapter Nine

Violence towards Aboriginal Women and Children

The Aboriginal Justice Inquiry devoted a chapter to dealing with issues facing Aboriginal women and children. One of the most significant was the issue of domestic violence. This chapter of the AJIC report contains separate sections on the ways that society responds to violence against Aboriginal women and violence against children. It reviews policy developments since the AJI report and makes recommendations.

Violence towards Aboriginal women

The AJI noted that one in three Aboriginal women experienced spousal abuse, a much higher rate than that experienced by non-Aboriginal women. According to the AJI, 53 percent of Aboriginal women who responded to a survey by the Indigenous Women's Collective for the AJI said they had been physically abused. Seventy-four percent of those women said that they had not sought help (AJI, Volume I, page 483). A study done for the AJIC by Dr. Jane Ursel confirmed the continuance of this heightened risk among Aboriginal women. It indicated that Aboriginal women represented 37 percent of the victims in the Winnipeg Family Violence Court between 1992 and 1997, even though they represented only 12 percent of the city's female population (Ursel, page 13).

The AJI was told that women often experience extensive abuse before they turn to the authorities for assistance. And when they did, they testified that the police were not always receptive to their complaints.

> Aboriginal women surveyed by the Indigenous Women's Collective indicated that the police response received by others discouraged them from going to the police for help. They complained of the lack of understanding of the problem by officers, and their lack of sensitivity. They believe the police do not understand the situation of the abused woman and the needs of children. (AJI, Volume I, page 483)

Evidence was presented to the Inquiry that suggested the police did not always consider spousal abuse a serious crime. In other instances, women spoke of being removed from their home by the police after they had made an initial complaint about a violent spouse. "Others told of situations where police attended in the home, saw the situation was calm when they were there and told the woman everything would be all right. When the police left, the violence became worse than before." (AJI, Volume I, page 483) The situation of women in remote communities was even more precarious. The AJI pointed out that a call for help may not be answered for a day or more, and housing shortages made it very difficult for someone to leave an abusive relationship and remain in her home community

Evidence was presented to the effect that women did not feel comfortable in bringing their concerns to the Inquiry. When offenders were incarcerated, they were eventually returned to their home communities without having received treatment, often without the victim's receiving any advance notice of their return.

The AJI report also articulated a belief in the need to protect and assist victims, and for the use of strong measures in dealing with offenders.

> Counselling and support for the victims of abuse are essential. Of course, stopping the abuse is the best possible solution and may lead to a continuation of the family unit. If it appears that abuse is likely to continue, the victim should be assisted to terminate the relationship. This cannot be done without a great deal of local support.
>
> We believe that if communities make it known that physical or sexual abuse will not be tolerated and that offenders will be dealt with harshly, there will be a significant reduction in abuse. Traditional Aboriginal means of punishment may be particularly helpful in these situations. Public ridicule and shunning, if applied with the support of the leadership in a community, may be as effective a deterrent as imprisonment.
>
> The physical or sexual abuse of a family member, or of anyone else for that matter, must be treated as extremely serious. The community must support that attitude.
>
> The support of chiefs and councillors is needed to provide the necessary feeling of security to women in Aboriginal communities. The local police, whether they be band constables or members of an Aboriginal police force, members of the City police forces or the RCMP, should be encouraged to remove offenders at the first sign of abuse. (AJI, Volume I, page 488)

The above passage is one of the few sections of the AJI report that speaks of measures conceived of as either harsh or punitive—although it should be noted that the AJI was of the opinion that, in certain circumstances, community-based measures could be harsher and more punitive than incarceration.

The AJI report also contained a strong criticism of Aboriginal leaders for failing to take a more forceful position on domestic violence.

> Most chiefs and council members are male and often exhibit bias in favour of the male partner in a domestic abuse situation. This can effectively chase the woman from her home and community.
>
> The unwillingness of chiefs and councils to address the plight of women and children suffering abuse at the hands of husbands and fathers is quite alarming. We are concerned enough about it to state that we believe that the failure of Aboriginal government leaders to deal at all with the problem of domestic abuse is unconscionable. We believe that there is a heavy responsibility on Aboriginal leaders to recognize the significance of the problem within their own communities. They must begin to recognize, as well, how much their silence and failure to act actually contribute to the problem. (AJI, Volume I, page 485)

The AJI recommended that:

- Police forces establish family abuse teams which include police officers and social workers trained in dealing with domestic disputes. Such teams should make extensive use of electronic record-keeping and community resources.

The AJIC has been informed that this recommendation has not been implemented. The stated reasons were the cost of implementation and an absence of strong empirical evidence supporting the efficacy of the abuse teams. However, in 2001 the Winnipeg Police Service did initiate the Winnipeg Police Services Early Intervention Pilot Project, a project that does appear to reflect the spirit of the AJI recommendation. This is how the project was described by Ursel:

> Constables on the "beat" will continue to be first responders. However, when these officers report a pattern of, as yet, non-criminal escalation, these cases would be referred to the early intervention team. The team consists of a police officer and social worker who would follow up with the family in question. The police officer could conduct further investigation to ensure that violence had not occurred and the social workers could assess risk and provide referrals to services to support the potential victim and treatment for the potential abuser. This team would then have a close connection to service providers in the community to ensure that referrals are made to agencies who could intervene quickly and appropriately given the identified needs of the couple. (Ursel, page 21-22)

The AJI commented on the lack of supports available to Aboriginal women who were the victims of domestic violence. It stated that:

> [T]here are no Aboriginal shelters, other than one in Winnipeg, no Aboriginal safe homes and no Aboriginal second-stage housing anywhere. The only shelter established and directed by Aboriginal people is Ikwe Widdjiitiwin in Winnipeg It is designed to deal exclusively with the unique cultural and social issues of Aboriginal women. (AJI, Volume I, page 487)

This led the AJI to recommend that:

- Shelters and safe homes for abused women and children be established in Aboriginal communities and in urban centres. These shelters should be controlled by Aboriginal women who can provide culturally appropriate services.

The AJI recognized that spousal abuse was a very serious matter that required immediate and direct intervention to save lives. The report criticized government for the slowness and inadequacy of police response, the lack of culturally appropriate treatment facilities, and the lack of culturally appropriate shelters. The AJI was also cognizant of the fact that the male-dominated power structures in Aboriginal communities did not always respond to the needs of victims of spousal abuse in an appropriate manner.

At the same time the AJI's recommendations were in keeping with the Inquiry's overall commitment to restorative and community-based visions of justice. The AJI recognized that the underlying causes of domestic violence could not be addressed by the justice system, but instead, by strengthening Aboriginal communities.

> In their presentations to the Inquiry, Aboriginal women called for a healing of the people—women, men, children, families, communities, Aboriginal women, we are told generally want to "fix" the problem and stay with the partner. They believe this can be done by programs that treat the whole family. Their philosophy is that strong, healthy families make strong, healthy communities. While they agree that some short-term crisis intervention often is needed, they want to go from that point to one where there is treatment provided for the family as a unit, including both the parents and the children.
>
> Aboriginal women ask for treatment that will focus on the whole person and the whole family unit. They believe this approach must include traditional Aboriginal teachings and healing. To achieve that type of an approach, the leaders of programs must themselves be Aboriginal with some skills or training.
>
> We agree that, instead of sending all abusers to jail, there should be a careful screening process. Where jail does not appear to be the best answer to the situation, we suggest that abusers be required to attend a culturally appropriate treatment program with other members of the family. We believe this will be more effective than fines, restraining orders or community service orders. (AJI, Volume I, pages 493-494)

The AJI cited the Hollow Water Resource Group as a potential model for a community-based treatment and healing program.

Police, government, community agencies, and Aboriginal organizations have initiated major policy and program initiatives since the AJI report was submitted. Training and protocols for police on the handling of these cases, combined with the emergence of zero-tolerance policies, enhanced victim services, and improved programs to manage offenders, have led to a more comprehensive response to domestic violence in Manitoba. Before discussing the AJIC's recommendations, it is worthwhile to review the developments of the past two decades.

Manitoba and Domestic Violence Policy: 1983-2001

The women's movement of the 1970s and 1980s brought the issues of violence against women and domestic violence onto the national stage. Initially, the movement lobbied for improved services, such as shelters, housing, and counselling, for the victims of family violence. Attention in the 1980s turned increasingly to the justice system. In response to what was seen as a long-standing judicial and police indifference to the issue of domestic violence, pressure grew to treat violence against spouses and other family members as criminal assaults.

Police attitudes and procedures came under serious scrutiny. As was reported to the AJI, many believed that the police did not treat matters of domestic violence as real crimes. Instead, domestic violence was viewed as a domestic matter that was best resolved with a lecture and a warning. There was a further sense that police were more likely to take a more interventionist approach if the victims were non-Aboriginal and of a higher socio-economic status.

In response, new approaches were developed. These policies were meant both to send a social message, and to intervene in a manner that incapacitated, deterred, and rehabilitated violent people. For the past two decades, the Manitoba government has been among the North American leaders in this area. The following chart outlines the major initiatives undertaken by the government during this period.

1983	The Attorney General requested police lay charges when there are reasonable and probable grounds to indicate that a crime has occurred, regardless of the relationship between the victim and the accused.
1986	The Women's Advocacy Program was created to assist women whose partners have been charged, by assessing the victim's risk, developing safety plans, and preparing women for court where necessary.
1990	The Family Violence Court was developed as a specialized criminal court with specialized prosecutors and designated intake, screening, preliminary hearings, and trials.
1992	Community Probations established a program to provide treatment for offenders in domestic violence cases.
1993	Winnipeg Police Service introduced its mandatory charging policy.
1997	The Family Violence Unit with Manitoba Justice was expanded so that Crown attorneys can follow cases from bail hearings through trial to appeal.
2000	Winnipeg Police Services created the position of Domestic Violence coordinator. Manitoba Corrections established a unit at Headingley Jail for domestic violence offenders.
2001	Winnipeg Police Services introduced a pilot project focussed on early intervention in domestic violence cases.

Policing

Perhaps the most publicly understood aspect of these policy initiatives has been the mandatory charging policy, which the Justice department refers to as a zero-tolerance policy. The policy is summarized in a September 1999 directive from the Manitoba Department of Justice:

> The Attorney General's policy regarding domestic violence is straightforward: there is zero tolerance. This means the discretion conferred on those responsible for enforcing the criminal law ought, at each stage of the proceedings, to be exercised in favour of sanctions where a lawful basis to proceed exists. In practical terms, this requires that where there is evidence to support charges, they will be laid. Where there is evidence to support conviction, the case will proceed to trial as soon as possible. If a Judge errs at

> the trial, or imposes an inappropriate sentence, an appeal will be taken to a higher court. (Guideline No. 2:DOM:1)

This policy change had a dramatic impact. From 1983 to 1993, the number of spousal assault charges in Winnipeg increased from 629 to 3743. Jane Ursel reviewed the data from the Winnipeg Family Violence Court for the period from 1992 to 1997. She noted that the major differences between Aboriginal and non-Aboriginal accused were in the area of socio-economic status.

Characteristics of Spouse Abuse Cases Resulting in Arrest by Ethnicity of Accused Winnipeg 1992-1997

	Aboriginal		Non Aboriginal	
Employment Status	Number	Percentage	Number	Percentage
Employed	954	20%	4,189	53%
Unemployed	535	11%	1,041	13%
Social Assistance	3,086	66%	2,311	30%
Other*	105	3%	311	4%

* The other category includes student, homemaker and retired. (Ursel page 14)

Ursel also noted that the majority of domestic calls made to the police in 2000 came from Districts 1 and 3, "core area communities which have a high ratio of low income individuals and a high ratio of Aboriginal households." (Ursel, page 15)

Prosecution

While the mandatory charging policy has led to a significant increase in charges, as would be expected, a high percentage of these cases result in stays of prosecution. From 1991 to 1997, 46 percent of the cases in the Winnipeg Family Violence Court were stayed, while 43 percent ended in guilty pleas. The other 13 percent proceeded to trial. At trial, 48 percent of the cases were dismissed, 19 percent ended in findings of not guilty, and 28 percent ended in guilty findings. The key reason for the stays has been the decision on the part of the complainant not to testify.

The reasons for a complainant's deciding not to testify against someone whom she had earlier accused of domestic violence are numerous and complex. It should be remembered that the reason why a person would have called the police in the initial instance would be to guarantee immediate personal safety. Issues as divergent as a reconciliation or the commencement of divorce proceedings, or a focus on economic, domestic, or housing issues, may lead a person to decide not to continue with an involvement in a prosecution. If the abuse continues, the individual may—and often does—decide to participate in a subsequent prosecution.

In theory, the Crown does not win or lose cases, it merely seeks to administer the law. However, the culture of our justice system is an adversarial one, and a policy that, at one stage, brands an activity "a real crime" by arresting the offender has been seen by some as being defective—and an abuse of state power—if it fails to achieve appropriate levels of "real outcomes"—namely, convictions and guilty pleas. In some jurisdictions complainants have found themselves forced to testify and charged for refusing to cooperate.

In Winnipeg, the Provincial Court has taken a different approach. A special Family Violence Court has been established. Crown attorneys have been encouraged to recognize the legitimacy of the views and needs of the complainant.

The most common disposition in the Family Violence Court currently is a supervised probation and court-mandated treatment, while the second most common disposition is incarceration (Ursel, page 32).

Disposition

The impact of the Family Violence Court on Aboriginal people from 1992 to 1997 was complex. First of all, Aboriginal accused are less likely to receive stays than non-Aboriginal accused. However, when one looks at charges that involve weapons, and charges that are described as serious domestic offences, Aboriginal and non-Aboriginal offenders receive stays at approximately the same rate. Aboriginal accused are more likely to plead guilty than non-Aboriginal accused, although this difference all but disappears when one looks solely at accused with weapons-related charges and more serious domestic violence charges. At trial, Aboriginal accused are less likely to be found guilty and much more likely to have the charge dismissed (usually because the complainant chose not to testify).

Aboriginal people had a much higher rate of incarceration than non-Aboriginal people and a much lower rate of conditional discharge. Unlike the dispositions described in the previous paragraph, this differential did not disappear when the results were controlled for weapons-related and serious domestic charges variables. This is a serious matter. Most of the study dealt with the period prior to the amendments to the Criminal Code dealing with the sentencing of Aboriginal offenders and the Supreme Court of Canada decisions dealing with this issue. For that reason, it is not possible to determine whether the courts are or are not applying these criteria when sentencing Aboriginal offenders. Furthermore, there are other variables, such as previous sentences of incarceration, for which the study could not provide controls. This is clearly a matter that requires continued observation.

The study conducted for the AJIC also looked at the ethnicity of victims. It showed that Aboriginal and non-Aboriginal offenders who assaulted non-Aboriginal victims were less likely to be incarcerated than those offenders who assaulted Aboriginal victims. This differential remained even after a number of controls were introduced. The length of sentences did not appear to vary by ethnicity, with 86 percent of Aboriginal and 88 percent of non-Aboriginal accused receiving sentences of less than six months, and only 2 percent of Aboriginal and non-Aboriginal accused receiving sentences of over two years. Similarly, the court treated both Aboriginal and non-Aboriginal accused in the same manner in ordering treatment, with 62 percent of the Aboriginal offenders being ordered to undergo batterers' treatment or counselling, and 37 percent ordered to undergo alcohol treatment. For non-Aboriginal accused, the percentages were 67 percent for batterers' treatment or counselling, and 30 percent for alcohol treatment. (Ursel, pages 33-44)

Corrections

The Family Violence Court has led to a dramatic increase in the number of probation sentences with court-ordered treatment. In response, treatment programs have been put in place. According to some evaluations, the most successful programs have been those that were community based. (These community programs would be dealing with the offenders who did not have record of violent assaults.)

Milner Ridge is currently set aside for individuals who have been convicted of domestic assaults, and a special unit for domestic offenders also exists at Headingley Jail.

Comments on These Changes

These initiatives have the potential of coming into conflict with a community justice model that seeks to reduce the number of people who are incarcerated in general, and, more specifically, the number of Aboriginal people who are incarcerated. They involve extending the use of criminal sanctions. It would appear that they have led to an increase in incarceration and an increase in the incarceration of Aboriginal people.

This Commission has previously argued for overall approaches in the justice system that:

- reduce the use of incarceration and encourage correctional program service delivery in communities
- use alternative or conditional sentences for as many offenders as possible
- encourage support and confidence in the system, through more Aboriginal-controlled service delivery such as police and probation services, more employment of Aboriginal people at all levels, and greater understanding of the impact of the system on Aboriginal people through cross-cultural and other training
- provide adequately resourced treatment programs for offenders and others
- provide community policing rooted in genuine partnership among police officers, police departments, governments and the community
- assist more community involvement, where communities want and have the capacity to assume and maintain justice roles, and provide adequate resources for these communities to discharge their duties

All these approaches must be implemented in a way that recognizes the overriding need to preserve personal safety. While there are points of tension and trends that come into conflict, it is imperative for the justice system to develop in a way that acknowledges that domestic violence is a serious problem, at the same time that it moves towards policies that deepen community justice approaches and foster restorative justice. It is also important to note there are a number of areas where the AJI recommendations and approaches can be seen to be in keeping with those approaches that have been developed in Manitoba.

At the outset, many supporters of mandatory charging argued it would have the impact of deterring future acts of domestic violence. Subsequent research indicates that this conclusion has not been borne out in reality. Individuals who were socially integrated (i.e., married and employed) were much more likely to be deterred by arrest. However, those who were poorly integrated and had records of criminal violence, were far less likely to be deterred from reoffending as a result of their involvement with the criminal justice system.

This conclusion is in keeping with the Aboriginal Justice Implementation Commission's contention that the criminal justice system is of limited utility in long-term crime prevention. The solutions lie the with community-development strategies that are addressed in the fourth section of this report. This does not mean, however, that the AJIC does not recognize a role for the criminal justice system, particularly in those instances where individuals are at immediate risk. Charging has the immediate impact of ending a dispute, thereby preventing its escalation to higher levels of violence. Through this policy, law enforcement protects individuals and, in general, denounces the view that domestic violence is a less serious form of criminal behaviour. While the AJI did not endorse mandatory charging, it did state, "The local police, whether they be band constables or members of an Aboriginal police force, members of the City police forces or the RCMP, should be encouraged to remove offenders at the first sign of abuse." (AJI, Volume I, page 488) Such a removal requires arrest and charging of an individual.

Critics have also stated that mandatory charging has led to dual arrests (defined as cases where the original complainant is arrested as well as the person about whom the original complaint was made). Dual arrests appear to lead to a high number of stays. The stays arise for a number of reasons, including the unwillingness of the original complainant to testify. This testimony is often the only evidence in the case. For these reasons, some critics have recommended that police be given more discretion in determining whether to lay a charge in a domestic violence case.

The issue of double arrests is complex. It arises in approximately 6 to 7 percent of the cases studied by Ursel. While there are undoubtedly incidents where a double arrest is appropriate, the fact is that mandatory charging creates a situation in which a violent abuser can have the complainant arrested simply by making a countercharge. This can have a number of undesirable outcomes: a victimized person can be further victimized by the legal system and the complainant may unwillingly decide not to testify in an effort to have all the charges dropped. Three possible approaches have been identified to this issue:

- increasing police discretion
- laying charges only against the primary aggressor
- referring the matter to the Crown for guidance

While stays do respect the views of the complainant, they also do nothing to provide the accused with any counselling or treatment. An alternative raised by Ursel is to institute rehabilitative remands. These orders would be used in situations where the complainant has acknowledged that, despite the existence of violent behaviour, she does not intend to testify. The case could be remanded until the accused completed a treatment program. On completion, the charge would be stayed—if the program were not completed, the accused would have the option, at that time, of determining if she wished to give testimony. If she did not, the case would be stayed. This policy can be adopted only if there is an expansion of existing treatment services.

As phrased, the government's current zero-tolerance policy suggests a preference for the most intrusive and punitive measures, with an aggressive appeals policy when judges exercise discretion in sentencing.

While the AJIC is recommending policing models that provide officers with discretion and flexibility, the Commission also recognizes that the mandatory charging model was introduced in response to deeply entrenched social attitudes that failed to recognize the criminal nature of assault within families. These attitudes remain—and are not just limited only to police officers.

The approach that the Family Violence Court has taken towards recognizing the legitimate needs of the victim can be expanded to incorporate community justice models discussed elsewhere in this report. Initiatives taken in this direction must take into account the safety and views of the victim, and the capacity of the community. The severe and difficult problems that underlie domestic abuse cannot be removed with one or two counselling sessions. The warnings raised elsewhere in this report, about the need not to move at a faster rate than communities wish and to ensure that community-based initiatives are well resourced, are of particular importance in this area. The need to proceed at a pace that the community is comfortable with is illustrated by striking differences in options available to those in larger urban centres, as opposed to those in remote communities.

Ursel notes that the majority of domestic violence calls to the Winnipeg police are in district one and district three, core-area communities that have a high ratio of low-income households and of Aboriginal households. She notes that "thousands of women at risk have no access to alternatives: they cannot afford lawyers or personal bodyguards. Nor do they have wealthy relatives who can finance 'a great escape'. Most women who use police services to stop violence are low-income women, although not only poor women call the police." (Ursel, pages 15-16)

This issue is exacerbated when we compare urban and isolated First Nation communities. In urban centres, police forces are present and are expected to respond in a timely way to separate the parties. There are shelters, safe houses, and second-stage housing. There is the availability of protection orders on a 24-hour basis. In a city, an abused woman may have a larger range of resources to turn to for assistance.

In a remote First Nation community, the police response time may be much longer if there is no local police detachment. Shelters or safe houses are few and far between. While protection orders are available on a 24-hour basis, the victim may have difficulty making an application over the phone. Due to the lack of housing and overcrowding in most First Nation communities, options of staying with friends and family are more limited. Social service agencies are often all but non-existent.

These issues are also exacerbated by jurisdictional issues over which level of government is responsible for funding these services, and what efforts Aboriginal leaders have made and are prepared to make to deal with the issue of domestic violence.

The Commission notes that the AJI recommended that:

- Aboriginal leaders establish a local government portfolio for women and children, with responsibility to develop educational and support programs in the area of spousal and child abuse.

There is no doubt that, as pointed out by the AJI and RCAP, the abuse of Aboriginal women is pervasive and serious. It requires urgent policy review and assessment. The criminal justice system must treat these issues as seriously as it does other assaults. It is important that this approach be maintained in the interests of personal safety. Once personal safety issues have been dealt with through mandatory charging and separation of the parties, the principles of justice may not be well served by a policy of vigorous prosecution in all cases.

The Aboriginal Justice Implementation Commission recommends that:

9.1
The Department of Justice, in conjunction with representatives of the Assembly of Manitoba Chiefs, the Manitoba Metis Federation, Aboriginal women's organizations, and other interested groups, review whether increased Crown discretion, in appropriate domestic violence cases, subject to appropriate guidelines, could be used to encourage counselling and other intervention programs. Any new approach should be carefully monitored and evaluated.

9.2
The Government of Manitoba support continued research and evaluation of domestic violence policies and programming, which includes analysis by ethnicity of accused and victims.

9.3
The Government of Manitoba expand availability of culturally appropriate Aboriginal treatment and support programs for family members involved in domestic violence cases.

The Commission has heard concerns from Aboriginal people about the special difficulties facing victims of domestic violence in remote Aboriginal communities.

Victims in these communities need safe places to go to, or, alternatively, the accused must be dealt with in a way that preserves the safety of the victim.

The Aboriginal Justice Implementation Commission recommends that:

9.4
Aboriginal leaders work with the Government of Canada and the Government of Manitoba to ensure that safe options for victims of domestic violence are available within communities.

Restrictive bail conditions may also mean that an accused in these remote areas must leave the community or face the prospect of inevitable breaches of a bail condition.

The Aboriginal Justice Implementation Commission recommends that:

9.5
The Department of Justice work with local authorities to seek options that, in domestic violence cases, would preserve the victim's safety but allow the accused to remain in the community while on bail.

One suggestion offered to the Commission to deal with this problem is to release the accused into the care of the community justice committee, with provisions allowing for supervised contact with the victim if the victim so wishes.

It is clear that there is a need to improve services to Aboriginal victims of domestic violence.

The Aboriginal Justice Implementation Commission recommends that:

9.6
The Government of Manitoba increase the number of Aboriginal persons employed by the Women's Advocacy Program so that advocacy services delivered to Aboriginal victims are delivered primarily by Aboriginal service providers.

The Commission did not believe it had the expertise or time to review in detail the issue of dual arrest. However, the Commission does believe the suggestion made by Dr. Jane Ursel warrants further examination.

The Aboriginal Justice Implementation Commission recommends that:

9.7
The Department of Justice review recommendations made by Dr. Jane Ursel in her paper prepared for the Aboriginal Justice Implementation Commission regarding dual charging to determine if they would assist in dealing with the question of dual arrests.

As the Commission has stated throughout this report, it favours early intervention strategies.

The Aboriginal Justice Implementation Commission recommends that:

9.8
The Government of Manitoba investigate whether there is an appropriate Aboriginal agency now providing a range of family violence programming, and, if so, whether the development of a 24-hour response capacity, available to men and women, in this agency would be effective in dealing with family violence issues.

9.9
The Government of Manitoba monitor the Winnipeg Police Services Early Intervention Pilot Project and consider the expansion of the program, should an evaluation so warrant.

Violence towards Aboriginal children

The Aboriginal Justice Inquiry labelled child abuse the most disturbing form of domestic violence. It spoke at length of its concern with the sexual abuse of Aboriginal children. A report presented to the AJI by the Winnipeg Children's Hospital Child Protection Centre stated: "The incidence of sniffing, alcohol abuse, eating disorders, suicide, depression, and sexual acting out among Indian children suggest that the problem of child sexual abuse has reached epidemic proportions." (Children's Hospital Child Protection Centre, *A New Justice for Indian Children,* 1987, page 27 cited in AJI, Volume I, page 489)

The AJI commissioners stated that

> The causes of sexual assault are complex and difficult to ascertain. Feelings of anger and frustration, and the need for a feeling of power or dominance over another, may partly explain this activity. Certainly, alcohol plays a major part,

> as many people do things under the influence of alcohol they would not normally do.
>
> Children are easy targets for angry parents, and often verbal and then physical abuse are directed towards them. They are in a difficult position to resist physical attacks or sexual advances from a parent or an older relative. While some of the history we spoke of earlier may offer some explanations for such unacceptable conduct, and even if that conduct is part of the legacy of colonization, we wish to make it clear that we find none of the explanations an excuse for the manner in which Aboriginal women and children are treated. With eight out of 10 Aboriginal women reporting having been abused—many of them as young children—the question of child abuse must be addressed forcefully because, in our view, it represents the single greatest threat to the future of Aboriginal people and their societies. (AJI, Volume I, page 490)

Based on this assessment, the AJI made a single recommendation on the issue of child abuse. It recommended that:

- The provincial government implement the recommendations found in the report of the Child Advocacy Project entitled *A New Justice for Indian Children*. (AJI, Volume I, page 492)

  Those recommendations read as follows:

- All rural detachments of the RCMP should receive additional training in child sexual abuse and the investigation of such cases. As well, RCMP training efforts in this area should be designed to include local tribal police for the dual purpose of maintaining a close relationship and providing these officers with proper information. Training should include the role of the peace officer in a multidisciplinary team....
- That the Attorney General's office give serious consideration to developing a program that would address the coordination problems inherent in reserve-based child sexual abuse cases. Such a program would address the issue of consistency, (i.e.: having the same Crown attorney throughout the case), as well as developing a working relationship with local Justice Committees. One possible option would be to hire legal assistants or paralegals to be based on the reserves for the purpose of facilitating a logical and orderly collaboration on each case. The possibility of developing Tribal Courts should, in our view, be explored by examining the relative success of such in other jurisdictions....
- That a program be initiated to promote the use of a multidisciplinary team approach on every reserve in Manitoba. The focus of such an approach would be tribal elders in conjunction with the local child-caring agency, the local Child Care Committee, and the local Justice and other pertinent Committees. By using such mechanisms as a foundation for a community-based approach, non-native institutions and methods can be adapted to use in reserve communities. If such teams demonstrate leadership and a willingness to act, legal and medical professionals from the white system can play a supportive rather than controlling role....

- It is recommended that there be considerable new resources committed toward developing a treatment capacity in each reserve, for offenders and victims, such resources currently being negligible. The logical vehicle for providing treatment is the local child-care agency, with advice and support from community elders, or perhaps a larger council of elders. Much needed culturally based prevention (personal safety) programs could then be developed for use in reserve schools....
- It is recommended that child-caring agencies with the responsibility for the protection of Indian children place a big priority on developing greater numbers of safe placement options for children. This includes the careful scrutiny of current placement options, as well as possible extended family placements. The development of innovative new safe places for child victims is an undertaking that would optimally be conducted in conjunction with Child Care Committees and multidisciplinary teams as they become operative.

There have been numerous developments in this area during the 14 years since *A New Justice for Indian Children* was released. Most recently, the Manitoba government has announced a program that utilizes what it refers to as child-friendly courtrooms and waiting rooms, specialized prosecutors, a process for early trial dates, and enhanced child-victim support services to address the issues faced by children who are victims of crime.

The AJIC has not had the opportunity to fully examine this area. As can be seen from the recommendations cited above, *A New Justice for Indian Children* concentrated its attention on the situation of Aboriginal children on First Nation reserves. The AJIC has noted elsewhere in this report that court services in many remote Aboriginal communities are substandard and are often unlikely to meet anyone's definition of a "child-friendly court." The AJIC was informed, for example, that the Child Victim Support Service position in Thompson has been vacant for nearly a year. Much of the information provided to this Commission on this point was anecdotal and difficult to evaluate. It has also been suggested to the Commission that the recommendation that calls on local childcaring agencies to prepare witnesses in child abuse cases may not be the most appropriate policy. Manitoba Justice stated that many of the victims are wards of the childcaring agencies, and many local workers play the dual role of supervising the child and foster home providers. If the abuse occurred in a foster home, they would be in a difficult position. Justice recommended that an "enhanced program within Justice may be more appropriate than the local child caring agency."

The AJIC has been told that, in general, the delivery of justice on reserves is marked by problems with training, staffing, turnover, and workload. The Commission has also been informed that these problems interfere with the proper treatment of children who are believed to be the victims of sexual assault. Given the AJI's assertion that child abuse "represents the single greatest threat to the future of Aboriginal people and their societies," the fact that there are so many gaps in service is distressing (AJI, Volume I, page 490).

Elsewhere in this report, recommendations are made about the future of Aboriginal child welfare. The establishment of Aboriginal child welfare agencies will be an important step in addressing this issue. However, the Manitoba government must ensure that such agencies have the resources they need. The recommendations of *A New Justice for Indian Children* emphasize the need to protect children and to involve the community in the provision of this protection.

The Aboriginal Justice Implementation Commission recommends that:

9.10
The departments of Justice, and Family Services and Housing, together with the appropriate child welfare agencies review, and report publicly on the status of implementation of the recommendations of the report, *A New Justice for Indian Children.*

Introduction to Section Four

Crime Prevention through Community Development

The previous section of this report addressed the Aboriginal Justice Inquiry recommendations that focussed on reforming the justice system in Manitoba. The AJI recommendations provide the framework for a community-based, restorative justice system. Action on those recommendations will improve the efficiency and legitimacy of the justice system. However, while such reforms are necessary, they are not sufficient to end Aboriginal overrepresentation in the justice system. The roots of overrepresentation are not found only in the justice system, but in the broader social setting, and will require concerted action from all three levels government in Canada.

There is much that is wrong with the way the justice system treats Aboriginal people. Involving more Aboriginal people and communities in that system, and moving that system from its current focus on punishment towards a restoration of social balance will make a difference. But it will not bring to an end the problems that Aboriginal communities have with crime. Aboriginal people are not only overrepresented as offenders in the justice system, they are overrepresented as victims. A long-term goal must be to reduce the victimization of Aboriginal people. This means a greater focus on crime prevention measures in Aboriginal communities. Crime prevention requires commitment to improve a wide range of social factors, to focus on the roots of social disorganization rather than on the symptoms of that disorganization, and to nurture and strengthen families, young people, and communities.

The justice system is reactive. The changes proposed in this section are preventive. They build on people's strengths and encourage community building. And, at the same time, they recognize that Aboriginal people who are at risk of becoming involved in crime often face multiple problems: racism, domestic violence, community violence, poor access to health care and education, inadequate housing, and limited employment options. These problems generate hostility, stress, and demoralization, and can lead to criminal behaviour. A successful crime prevention approach will address all these issues in a coordinated fashion.

Crime Prevention

The Aboriginal Justice Implementation Commission has adopted a broad view of crime prevention. On one level, crime prevention involves reducing the number of opportunities for crime to take place. This is often referred to as situational prevention, since it addresses specific situations. It can include community patrols, security systems, and the engraving of social insurance numbers on property. These are all measures that make crime targets less vulnerable. These strategies have most of their impact on preventing property crime, not crimes of violence.

The federal government has adopted a "safer communities" approach to crime prevention. In response to the 1993 *Report of the Standing Committee on Justice and the Solicitor General,* the federal government established the National Strategy on Crime Prevention and Community Safety. As part of this strategy, the government is funding the National Crime Prevention Centre (NCPC). The NCPC has supported hundreds of crime prevention programs across the country, including community-based solutions to problems that contribute to the victimization of Aboriginal persons.

Other crime prevention strategies seek to reduce the number of offenders, through a greater focus on community and social development. These programs focus on early childhood education, parental skills training, and youth employment. Because the problems are multi-faceted, strategies to reduce crime must also be multidisciplinary and well coordinated. It will require significant policy attention in the areas of education, child welfare, childcare, housing, health care, employment standards, and economic development. It will also involve considerable community input—indeed, these policies cannot succeed in the long run if they do not result in the creation of strong families in strong communities.

Social development programs can reduce the number of offenders in society by addressing those factors that put a person at risk of becoming an offender. These programs address home and family life, education, training, employment, housing, and recreation. These programs are often targetted toward young people because:

- Early childhood experiences play a significant role in determining adult behaviour.
- Young people 15-19 are the group at greatest risk for committing crime.
- Most adult criminals began their criminal careers as youth.
- Young people may be most amenable to intervention.

Those who are at the greatest risk face the greatest number of risks. To have an impact, the social development programs must be substantial. They must address the young person's specific needs and the person's environment (parents, schools, community). Short-term programs have, it appears, only short-term impacts.

The next three chapters look at three crucial elements in a long-term crime prevention strategy: the need for strong families, for strong, confident young people, and for strong communities. While the focus is on young people because there is clear evidence that money spent on early years' education decreases the likelihood of a person's coming into conflict with the law, the AJIC recognizes that families, young people, and community are all interconnected. For example, while this report discusses employment and income policies under the heading of "community", the AJIC recognizes that decent incomes and secure jobs take the stress off families and provide young people with better home lives. In short, in order to raise young people who are going to have the skills and abilities and life choices that steer them away from conflict with the law, we need to look at those factors that affect child development. These are the family, the school, and the community.

The AJIC has the following over-arching goals for each of the following chapters.

Strengthening families involves:

- promoting healthy babies
- improving parenting skills
- increasing family cohesion
- preventing child abuse and neglect
- reducing aggressive behaviours
- enhancing children's intellectual and social development

Strengthening young people involves:

- providing support and guidance to vulnerable adolescents
- providing educational programs that keep young people at risk in the school system
- assisting young people who are at risk to successfully make the transition from school to work
- improving school outcomes and fostering pro-social behaviour
- increasing social skills and reducing aggressive behaviour
- preventing youth homelessness

Strengthening communities involves:

- developing income policies that ensure that children grow up in families that can meet their developmental needs
- developing employment policies that provide meaningful work at wages that ensure that children grow up in families that can meet their developmental needs
- developing policies that reduce social inequality

Research indicates that these policies will be most effective if they are implemented on the basis of the following principles:

Comprehensiveness:	Programs should address the needs of the child, the family and the community.
Accessibility:	Programs must actively reach out to ensure that all targetted families have the ability to participate.
Proactive:	Programs must target children who are at risk of coming into conflict with the justice system.
Integrated:	Programs should bring together social service, education, and health care services.
Community driven:	The design, allocation, and delivery of programs should rest with community authorities.
Quality:	There should be provincial standards of practice.
Accountability:	Evaluation is an important component of crime prevention programming and must be encouraged in a provincial strategy. There must be ways of ensuring that funds go to services.

These principles should be borne in mind as a part of any community development, crime prevention strategy.

Aboriginal organizations are well aware of the need for action in these areas. They are also aware of the fact that previous efforts in these areas have failed to achieve their goals, or have hurt, rather than assisted, Aboriginal communities because they were controlled and administrated by non-Aboriginal agencies, their impacts were diffused due to the existence of multiple agencies, they were underfunded, or they became enmeshed in inter-jurisdictional conflicts. These problems remain and are best resolved by ensuring that these initiatives are properly resourced, and support Aboriginal communities in developing, controlling, and delivering adequate and appropriate services to their own people.

Chapter Ten

Strengthening Families

The Importance of the Early Years

Over the past 20 years, research has emerged to support what for many was the common-sense view that the first years of a person's life are perhaps the most important in shaping a child's development. The social environment, particularly in early years, has an extremely important impact on a person's life chances. There are early factors—both biological and developmental—that have lifelong impacts. For example:

- Weight at one year of age has been associated with risk of death from heart disease.
- Talking and play are associated with strong development of language and cognitive skills.

Success at school is affected in many ways by the skills that students gain prior to school entry. It is in the first six years of life that they gain the skills required to learn how to read, do arithmetic, delay gratification, control emotions, and cooperate with others. Studies show that failure to acquire these skills before starting school puts a child at increased risk of becoming involved in crime, teen pregnancy, and substance abuse (Hertzman, page 12).

Neurobiologists are identifying that the pre-school period is also a critically important period for brain development. According to Hertzman:

> The current best understanding of the biological and environmental influences on children's development may be summarized as follows. Spending one's early years in an unstimulating, emotionally and physically unsupportive environment will affect brain development in adverse ways, and lead to cognitive, social and behaviourial delays. The problems that children so affected will display early in school will lead them to experience much more acute and chronic stress than others, which will have both physiologic and life-course consequences. (Hertzman, page 14)

These problems have social impacts at an early age. Studies show that students in schools that have few students with delayed vocabulary development move through the school system at a faster pace than children in schools where higher proportions of students have delayed vocabulary development. It is also the case that those preschool children who do not develop the ability to control their anger are likely to grow up and become the most physically aggressive adults.

According to Richard E. Tremblay:

> Children who fail to learn alternatives to physical aggression during the preschool years are at very high risk of a huge number of problems. They tend to be hyperactive, inattentive, anxious, and fail to help when others are in need; they are rejected by the majority of their classmates, they get poor grades, and their behaviour disrupts school activities. They are thus swiftly taken out of their "natural" peer group and placed in special classes, special schools and institutions with other "deviants," the ideal situation to reinforce marginal behaviour. They are among the most deviant from pre-adolescence onward, are the first to initiate substance use, the first to initiate sexual intercourse, the most at risk of dropping out of school, having a serious accident, being violent offenders, being charged under the Young Offenders' Act and being diagnosed as having a psychiatric disorder. (Tremblay, page 23)

Offender profiles developed by the Ministry of the Solicitor General in 1995 support the view that it is extremely important to focus on young people. Almost all the inmates studied in a 1995 survey of Canadian penitentiaries had been the victims of some form of child abuse or had witnessed acts of domestic violence. Eighty-two percent tested at less than a Grade 10 educational level, 50 percent had a substance problem, and 55 percent had used drugs or alcohol on the day of the offence for which they were convicted (Linden, page 31-32).

The more risk factors there are in a child's life, the less likely the child will be well prepared for school. Without that preparation, school can become an alienating and humiliating institution that children reject and leave as soon as possible.

It is also clear that the risk young people face is not distributed evenly through society. Many of the major risk factors for young people have to do with their family setting. These include poor child-rearing and supervision, antisocial parents and siblings, and low family income. Children are most at risk if they come from families where:

- discipline is inconsistent and erratic
- parents do not care for them
- parents have problems with drugs and crime
- parents are poor and unemployed

For adolescents, other risk factors are ties to antisocial or delinquent peers, and belonging to a gang. Before reviewing those measures that can be taken to reduce this risk, it is worthwhile to review a number of specific issues facing Aboriginal families.

The Family

The Royal Commission on Aboriginal Peoples provided a series of recommendations regarding the family in its final report. The Royal Commission noted "two things stand out in presentations by Aboriginal people at our public hearings; the overwhelming concern for the well being of children and the belief that families are at the crux of personal and community healing." (RCAP, Volume III, page 10). The Royal Commission also stated that:

> To Aboriginal people, family signifies the biological unit of parents and children living together in a household. But it also has a much broader meaning. Family also encompasses an extended network of grandparents, aunts, uncles and cousins. (RCAP, Volume III, page 11-12)

Aboriginal people have survived the colonization process of the past century or so; however, this has been at a tremendous cost to their families in Manitoba and Canada. Although Aboriginal families have survived, many are suffering and exhibiting stress in a number of ways. A primary indicator is the number of Aboriginal children in custody of provincial and Aboriginal child welfare agencies. For example, the number of Aboriginal children in care with the Winnipeg Child and Family Services Agency is approximately 70 percent of the total number of children in its care. Further demonstration of the distress is the number of young people in Manitoba's youth detention facilities; a one-day snapshot taken by this Commission in the fall of 2000 showed that over 85 percent of the youth were Aboriginal.

Another critical statistic demonstrating the distress or disorder in Aboriginal families is the high number of Aboriginal males in custody due to family violence issues. The Aboriginal Justice Inquiry had made a number of recommendations regarding violence towards women and children. However, little sustained programming has been implemented.

Federal and provincial government policies have been implemented that, at times, have had the effect of critically destabilizing Aboriginal families. An example is the education policies of the last century developed by the federal government. The policies were designed with the view to assimilate Aboriginal people as quickly as possible into the larger Canadian society. The government viewed children as the most effective target group.

The children were separated from their families and communities for ten months of the year for at least ten years of a child's lifetime. This was sufficient time for the government and churches to institute programs to erase the teachings and values of the parents and their communities. The children were overseen and taught by non-Aboriginals who worked to reorient the children towards non-Aboriginal societal values. The federal government's objective was for the children to be assimilated into the larger society, but its program of assimilation had not accounted for the racism directed towards Aboriginal people.

The racism precluded many Aboriginal people coming through the residential schools from assimilating into the Canadian society. At the same time, these individuals found themselves alienated from Aboriginal communities when they sought to return to their home communities. Stress and distress became the norm for many within Aboriginal societies.

It is only recently that the survivors of the residential school system have spoken of their suffering in the institutions. The Royal Commission recommended the establishment of a commission to review the issue. However, this recommendation has not been implemented.

Policies related to the care of children and support for children needing care, constitute another example of the continuing, systemic, de-stabilization of Aboriginal families by the larger Canadian society. The policies were established with the objective of caring for and supporting children. However, those same policies undermined Aboriginal families. Commissions and inquiries, such as the Kimelman inquiry in Manitoba, documented the impact of those policies. Kimelman labelled the systematic apprehension of Aboriginal children by non-Aboriginal child welfare agencies as "cultural genocide." The decade of the sixties has been labelled as the "Sixties scoop," as hundreds of Aboriginal children were shipped out of the country for adoption. This constituted a fundamental loss to the Aboriginal communities in Manitoba.

Leaders, Elders, and others within the Aboriginal, First Nations, and Métis communities have begun the healing in a number of ways. An important step has been the establishment of Aboriginal child and family services. The recent initiative to increase the jurisdiction of these agencies is also a step towards the healing of Aboriginal communities. This is only part of the continuum, and more must be done to support and to strengthen Aboriginal families in Manitoba.

Aboriginal families are indeed a critical resource for all Aboriginal communities. The Aboriginal population is a young population. Over 50 percent of all Aboriginal people are between the ages of 15 and 25. With such a young population, the risk factors will continue to be high for Aboriginal communities, especially in the urban areas.

Can Anything be Done?

A proactive crime prevention strategy at the family level has the twin goals of preventing child abuse and neglect, and enhancing children's intellectual and social development.

The research the Aboriginal Justice Implementation Commission has reviewed suggests that policies that support parents and provide preschool education hold out the most promise. It should be noted that these programs are often most effective when they are interlinked. Furthermore, programs must be comprehensive—often the best assistance one can offer a parent is an improvement in housing, clothing, and nutrition.

Raising Children

Research provides increasing support for the view that the strength of family ties, parental supervision, and discipline issues all have an impact on whether a child is likely to engage in delinquent activity as a young person and criminal activity as an adult. It should be noted that this research does not simply affix blame on parents or imply all that needs doing is for them to provide their children with better care. Children are raised in a social context. Single mothers living in poverty, coming from a background of family violence, lacking in labour market skills, and living in a dysfunctional community, cannot be expected to raise healthy, self-reliant, and law-abiding children without assistance. These families need assistance in learning how to raise their children, and they need economic and social support.

The parents of children at risk often have difficulty in shaping their children's behaviour by positive family interactions, rewards for good behaviour, and the use of non-physical sanctions. These skills can be developed. Studies show that when parents are provided with such education, there is an observable, positive impact on their children. Research indicates that intensive home-based services that involve the family as well as the other groups, such as the school, the peer group, and neighbourhood, can reduce rates of criminality, institutionalization, and drug abuse.

A survey report by Dr. Rick Linden prepared for this Commission indicated that a variety of parental mentoring programs, home-visit programs, and early childhood education programs have positive effects on antisocial behaviour, academic achievement, and parental involvement in the children's education. While there is a need for further research in this area, it would appear that these low-cost programs have the potential to provide significant long-term benefit.

Preschool Programs

Preschool programs have the potential to reduce crime and delinquency. The Perry Pre-School Program in Ypsilanti, Michigan, is perhaps the most well known and cited of these preschool programs. This was a highly structured, preschool program for children from economically and socially disadvantaged backgrounds that was coupled with a home-visit program. It lasted 30 weeks a year for two years, and included the study of a control group of children who did not receive any programming. The study has been following the lives of these children for over two decades. It was found that the children who had been involved in the early childhood program had significantly higher rates of high school graduation, home ownership, earnings, independence from social services, and—most importantly for the purposes of the AJIC—had lower arrest rates. It has been estimated the saving was over $7 for every dollar invested in the program. According to Linden, a review of 13 other educational prevention programs showed that the most successful programs were of long duration, and focussed on children, parents and teachers.

The Andrews Street Family Centre

The Andrews Street Family Centre (ASFC) is a Winnipeg community-based initiative founded on the belief that children are reliant on their parents and that all parents, regardless of their life situations, require help and support at times.

Community members played a central role in creating the program and continue to play a role in providing it with direction. The program operates:

- a family resource centre
- a drop-in centre for children and youth 7 to 17 years of age. It emphasizes cultural and recreational activities, and encourages parents to be involved along with their children.
- a program for young mothers
- a community patrol

Aboriginal Head Start

The Aboriginal Head Start program was developed in 1995, following extensive consultation with the Aboriginal community. Designed for preschool children, the program also provides outreach support for their parents. It provides access to other community health and social services, and provides coordination of these services. This method emphasizes an active learning process and problem-solving skills, and encourages staff to form relationships and to share control with the children, and to act as facilitators, rather than instructors.

Current Government Initiatives

The Manitoba government has established a cross-department program that focusses on children in their early years. Healthy Child Manitoba is an initiative that works across departments to build a community-development approach for the well-being of Manitoba's children, families, and communities, with a priority focus on conception, through infancy and the preschool years.

It is led by the Healthy Child Committee of Cabinet, chaired by the Minister of Family Services and Housing, and comprising the Ministers of Aboriginal and Northern Affairs; Culture, Heritage and Tourism; Education, Training and Youth; Health; Justice; and the Minister Responsible for the Status of Women.

The five core commitments of Healthy Child Manitoba are parent-child centres, prenatal and early childhood nutrition programs, nurses in schools, fetal alcohol syndrome/fetal alcohol effect prevention, and adolescent pregnancy prevention.

Childcare

Organized childcare dramatically improves cognitive development. Important elements in an effective childcare program are low caregiver-to-child ratios, well-trained staff, and a safe and stimulating environment.

Manitoba has almost 23,000 licensed childcare spaces in nursery schools, infant, preschool and school-age centres, and family care homes.

The Manitoba government is currently in the process of reviewing its childcare policies. Its policy document, "A Vision for Child Care and Development in Manitoba," focusses on standards and quality care, funding, training and professionalism, governance, integrated service delivery, and public education.

Over the past decade, there has been a decline in childcare measured in terms of the availability of spaces, the affordability of care, and the quality of service. In a study of childcare in Manitoba in the 1990s, Dr. Susan Prentice wrote:

> Between 1989 and 1999, Manitoba's regulated childcare system remained inadequate or declined. Today, there is a licensed child care space for only one in ten Manitoba children, but this ratio worsens for some age groups and communities who are even more severely under-served. Most care is provided to preschoolers aged 2-5 years; all other age groups have less access. Services in rural and northern areas are much less available than in Winnipeg. Aboriginal, francophone and special needs children also have worse access than other Manitobans. Growth in the number of facilities has been extremely limited; in 1999 there were just 37 more childcare centres than there were in 1989, and the number of family homes has actually declined since 1992-93.

> Childcare fees are high and rising, although most parents cannot afford regulated care. The cost of infant group care has risen 79% since 1988, and fees for other age groups increased at least 21%. It is harder for a low-income parent to qualify for a fee subsidy today than in 1989. Parent eligibility for a "full" subsidy is cut off well below the poverty line. Since 1993, even the poorest parent is usually surcharged up to $2.40 per day per child, or between 8 and 24 per cent of the daily fee. Childcare has grown more income stratified over the decade, and today is a more targeted service than in 1989. Despite these problems with access and affordability, the province increased fees in 2000-2001, and did not extend eligibility for subsidy, eliminate the punitive $2.40 per day per child charged to subsidized parents, or introduce a sliding fee. (Prentice, no page)

According to Prentice's study of childcare in Manitoba:

> Currently, Manitoba First Nation communities, under the Inuit/First Nations Initiative, are planning childcare services, undertaking needs assessments and beginning early childhood educator training courses. By the end of the Initiative, it is expected that 1,042 reserve-based child day care spaces will be established in Manitoba, governed by First Nations established policy, framework, and regulations. By 1998, about 60 on-reserve centres (unlicensed) had been started in Manitoba. In urban areas, Aboriginal families (like other Manitobans) may use the regulated childcare system, if they can find and afford care.
>
> Manitoba does not license or fund child care programs on-reserve, although the Child Day Care Branch will assist on-reserve facilities to meet licensing requirements. Approximately 60 new child care centres have been established since 1995 under the federal government's First Nations/Inuit Child Care Initiative. (Prentice, page 14)

Childcare services strengthen families in a number of ways. They can provide a healthy environment in which basic skills are developed, and children are prepared for school and encouraged in appropriate behaviours. At the same time, they provide a respite for parents, an opportunity to participate in the labour force, and a meaningful form of employment. However, to achieve these goals, the Manitoba government must improve accessibility, availability, and the quality of childcare service in Manitoba.

It is still difficult for many to access the daycare required by parents in today's society. This is particularly evident for Aboriginal families. A growing phenomenon of single-parent families headed by Aboriginal women in Winnipeg is evident from recent statistics. Over 60 percent of all single-parent families in Winnipeg are headed by women. An added factor is that single-parent families appear to be at higher risk for negative life outcomes. Various support programs aimed at supporting families and assisting the educational needs of children should be developed.

For these reasons, the AJIC encourages the government to take steps to ensure the provision of affordable childcare.

Aboriginal Child Welfare

The Aboriginal Justice Inquiry devoted a chapter to the issue of Aboriginal child welfare. It recommended that:

- The provincial government establish the Office of Child Protector, responsible to the Legislature, as recommended in the Kimelman Report. This office's responsibilities would be, among other things:
    a. To ensure that children involved with the child welfare system have their interests and rights protected.
    b. To receive and investigate complaints about the manner of treatment of children by child welfare agencies.
- Aboriginal and non-Aboriginal child and family service agencies be provided with sufficient resources to enable them to provide the communities they serve with the full range of direct service and preventive programs mandated by the Child and Family Services Act.
- The federal and provincial governments provide resources to Aboriginal child and family service agencies for the purpose of developing policies, standards, protocols and procedures in various areas, but particularly for the purpose of developing computer systems that will permit them to communicate quickly and effectively with other agencies, to track cases and to share information.
- Principle 11 of the Child and Family Services Act be amended to read: "Aboriginal people are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage".
- The Province of Manitoba in conjunction with the Manitoba Metis Federation develop a mandated Métis child and family service agency with jurisdiction over Métis and non-status children throughout Manitoba.
- The jurisdiction of the reserve-based Indian child and family service agencies be extended to include off-reserve band members.
- Indian agencies be provided with sufficient resources to ensure that this expanded mandate be effectively carried out.
- A mandated Aboriginal child and family service agency be established in the City of Winnipeg.

The Aboriginal Justice Implementation Commission is aware that the Office of the Children's Advocate has been established, and that a number of additional, mandated First Nations child welfare agencies have also been established since 1991. However, neither a Métis agency nor a Winnipeg agency has been established.

Its first quarterly report, the AJIC recommended that:

10.1

The Government of Manitoba seek to enter into agreement with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation to develop a plan that would result in First Nations and Métis communities developing and delivering Aboriginal child welfare services.

The Commission made the recommendation because it understood that both the government and Aboriginal representatives were willing to take such action, because of the importance of children and families. The Framework Agreement between the federal government and the Assembly of Manitoba Chiefs highlighted child welfare, as did the tripartite agreement between the Manitoba government, the federal government, and the Manitoba Metis Federation. Since the *Report of the Aboriginal Justice Inquiry*, the Royal Commission on Aboriginal Peoples had also recognized the importance of the area by making a range of recommendations in its final report.

Subsequently, the Manitoba government entered into agreements with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation to develop a plan that would result in the development and delivery of Aboriginal child welfare services by First Nations and Métis communities. (Information on this initiative is available at www.aji.-cwi.mb.ca.)

Chapter Eleven

Strengthening Young People

The recognition of the importance of early-years intervention should not be used as a justification for society to turn its back on young people who are at risk once they enter the public school system. No matter what their backgrounds, adolescents are not permanently locked into their futures. Research shows that comprehensive programs that stick with young people, and that offer work, service, and incentives, can make a difference.

There is, of course, a much more positive reason to invest in young people than simply to prevent crime. A skilled and educated populace is the basis of a healthy, functioning community. In the coming years, Aboriginal people will constitute a significant portion of the Manitoba workforce. Investing in the skills of the coming workforce makes sense from economic and social perspectives.

For these reasons, those institutions that deliver educational, social service, and recreational programs can play an important role in crime prevention and community development.

The Aboriginal Justice Implementation Commission's recommendations in this area are aimed at developing policies that support the following goals:

- providing support and guidance to vulnerable adolescents
- providing educational programs that keep young people at risk in the school system
- assisting young people who are at risk to make the transition successfully from school to work
- improving school outcomes and fostering prosocial behaviour
- increasing social skills and reducing aggressive behaviour
- preventing youth homelessness

Schools

After the family, the school is perhaps the most important institution in determining a child's life chances. It is an institution that socializes, that evaluates, and that educates. In doing so, it determines both the student's life chances and his or her immediate sense of self-worth. Students who do well in school are far less likely to be at risk of becoming involved in delinquent activities.

According to the study on crime prevention prepared for this Commission by Dr. Rick Linden:

> A major review of crime prevention programs conducted for the United States Congress (www.preventingcrime.org) concluded that programs that build school capacity to initiate and to sustain innovation; programs that effectively communicate appropriate behavioral norms; and programs that taught social competency skills such as problem-solving, communication skills, and decision-making had an impact on delinquency. (Linden, page 14)

Research prepared for the Commission indicates that there has been success where schools:

- allow pupils to participate in decisionmaking
- make greater use of programs such as performance-based education
- use cross-age tutoring
- involve students in the operation of the school
- assist students with the transition from school to work
- use curricula culturally relevant to students
- provide alternative classes or schools for high-risk children
- have the capacity to innovate
- communicate behaviour norms to students
- teach skills such as problems solving, communication skills, and decision-making

Aboriginal Educational Experiences

> The destiny of a people is intricately bound to the way its children are educated. Education is the transmission of cultural DNA from one generation to the next…It determines the productive skills of a people…Aboriginal parents, elders, youth and leaders have come forward to tell us of the vital importance of education in achieving their vision of a prosperous future. Education is seen as the vehicle for both enhancing the life of the individual and reaching collective goals…

> Current education policies fail to realize these goals...Human costs of this failure is immense. (RCAP, Volume III, page 434).

Federal and provincial education policies of the last hundred years have failed to meet the needs of Aboriginal people. For proof, one needs only to refer to residential schools and the aftermath of the policy governing that phase of education. Modern-day policies have been more enlightened and have featured sustained initiatives by both levels of government. Aboriginal teachers and support staff have been hired and curriculum has been revised to address some of the needs of Aboriginal students. Many First Nations communities have established control over their schools over the last two decades. However, the results flowing from the initiatives continue to be minimal (RCAP, Volume III, page 438).

A document prepared by the Manitoba Department of Northern and Aboriginal Affairs for Manitoba provides the following information about Aboriginal educational attainment rates:

Percent of Aboriginal graduates - high school:	33.7 percent (Aboriginal youth 15-29 who have completed high school; 53.9 per cent have some high school.)
Percent of non-Aboriginal graduates - high school:	62.7 percent
Percent of grade 12 completed by Aboriginal people in Manitoba:	38.2 percent (age 15+)
Percent of grade 12 completed by non-Aboriginal people:	61.2 percent
Percent of Aboriginal youth (age 15-25) attending school:	44.1 percent
Percent of Aboriginal people with a university degree:	2.9 percent
Percent of non-Aboriginal people with a university degree:	12.6 percent

The figures show that Aboriginal people in Manitoba continue to experience low rates of attainment for high school graduation and for completion of university degrees. However, there is some encouragement to be drawn from the fact that Aboriginal people who have a high school diploma are more likely to attend post-secondary institutions (university, community college, or other institutions). Over half of those who have completed high school have some post-secondary training. However, there is a large proportion of Aboriginal students who are not completing high school (over 65 percent). This suggests the gap between Aboriginal and non-Aboriginal outcomes will continue to widen. It appears that there is also a large gap between those Aboriginal people who have attained high school and post-secondary education certification, and those who are not attaining either.

A troubling statistic noted above is that only about 44 percent of the Aboriginal youth in Manitoba are attending school. Manitoba has the one of the lowest attendance rates in Canada. The statistic is notable in light of research and other documentation that indicates that not being enrolled in school is an indicator of a young person's probability of coming into contact with the legal system. The risk factor is much lower where the child is attending school.

The problems that Aboriginal children experience with the school system appears to culminate in mid-teen years, when children begin disappearing from the schools. The problem, as noted by the Royal Commission on Aboriginal Peoples, appears to be that the secondary school years are a culmination of issues arising from a child's progression through elementary school. These factors can include poverty, social change, family violence, and disruptive interventions in Aboriginal families.

In the area of education, the Royal Commission on Aboriginal Peoples called for:

- innovative curricula that reflect Aboriginal cultures and lifestyles
- increased involvement of parents, elders, and families
- empowerment of young people
- acknowledgement of the spiritual and ethical dimensions of learning

These concerns have been addressed to some measure by urban and other education authorities. However, the existing curriculum has not been substantially engineered to address an Aboriginal child's needs. Rather, the expectation is that the child will adjust to meet the existing curriculum. Additional planning and work must be done to ensure parental involvement and support for children in the school environment. School and education must be made relevant to Aboriginal children, especially in the urban environment.

The Commission would also reiterate the recommendation of the Royal Commission on Aboriginal Peoples that more Aboriginal teachers and educational program designers must be involved in the educational system, especially where there is a significant enrollment of Aboriginal children in schools.

For most of the last decade, provincial government spending on education has not kept pace with the level of growth in the provincial economy. This has placed a greater share of the burden of public education funding on local school boards and the property tax base. In addition, a number of programs that assisted Aboriginal students in gaining access to post-secondary education were reduced or eliminated during the 1990s.

Aboriginal Education and Training Framework

The Manitoba Government has developed an Aboriginal Education and Training Framework that addresses a number of issues the AJIC has identified as being of significance.

The Aboriginal Education and Training Framework has as its goals:

- improved student success and completion rates
- increased skills training and rates of employment
- strengthened and effective partnerships

The Framework calls for action in the following areas:

- ensuring that the necessary structures, processes, and data are in place or being developed to support the Framework, through partnerships between departments and with Aboriginal people, in developing and carrying out education initiatives
- recruiting and retaining Aboriginal staff, and training to increase sensitivity and operational ability of all staff to understand and meet the program needs of Aboriginal Manitobans
- supporting early childhood transition to school and strengthening the meaningful involvement of parents, families and communities in education
- ensuring there is effective, relevant, and high-quality curriculum, and learning resources, and inclusive learning environments for all students
- ensuring that the needs of Aboriginal people are included in any transition to work activities
- ensuring linkages across departments, across sectors, and across jurisdictions

This Framework represents a positive action plan for addressing many of the issues Aboriginal young people are facing. Furthermore, Manitoba Education provided the Commission with the following recommendations:

Kindergarten – Secondary and Post-Secondary Education & Training

- Increase Aboriginal representation and involvement in all areas of the education system. This includes professional positions in school systems and within the Department of Education; volunteerism; Parent Advisory Councils, with a particular emphasis on positions that include decision-making capacities.
- Expand and further implement Aboriginal perspectives in Manitoba curricula to be used in schools. Post-secondary education institutions should strengthen Aboriginal content in all programs.
- Increase the number of Aboriginal-focussed schools and programs in areas with high Aboriginal populations.
- Develop and further enhance Aboriginal language and culture programs.
- Increase support for early-years education and literacy programs.
- Promote and facilitate greater parental, community, and Elder involvement in education.
- Expand opportunities for youth to develop leadership skills.
- Identify and support "best practices" and intervention strategies that address and assist at-risk students, especially those vulnerable to youth-gang recruitment and activities.
- Provide greater access to career and labour market information with appropriate supports to assist in career development.
- Provide opportunities for youth to participate in business, government, and other local decision-making bodies.
- Strengthen employment supports (career counselling, labour-market information, job placement, and other employment services that are available through Employment Centres), making them more readily available through correctional facilities, especially as part of plans for transition back into the community.

- Review the proposed establishment of two, separate, post-secondary education institutions (university college for the north and a southern Aboriginal institution).
- Facilitate and support the potential establishment of an Aboriginal Justice Training Institute.

Aboriginal Teacher Education

- The number of Aboriginal people being trained as educators should be increased. The need for administrators, guidance counsellors, and senior years math and science specialists will continue to grow.
- Both mainstream and Aboriginal-focussed teacher education programs should be available, and both models must effectively support the development of Aboriginal people in all aspects.
- Development opportunities and capacity-building for Aboriginal education and training for all teachers/faculty/instructors should be mandatory.

Intervention

For those who become incarcerated, academic and vocational education could provide a second chance to address their educational disadvantage and skill deficiency, and better equip ex-offenders to compete for employment, education, and training opportunities. Recommendations include:

- Expand academic and literacy programming within correctional facilities, with an emphasis on youth.
- Utilize Prior Learning Assessments to enable Aboriginal people to get recognition for learning outside the formal education system.
- Implement Access programs and other alternative models to support increased Aboriginal participation in post-secondary education programs.
- Facilitate long-term programs that incorporate mentorship and role model components.
- Expand culturally appropriate transitional programs—for example, Youth Build Programs for youth—to acquire construction skills, and complete a high school education and leadership training.

- Develop specific programming and curriculum for the different needs of both male and female inmates.
- Develop education and training programs that take into account current research on effective strategies for individuals with FAE and/or FAS.
- Collaborate with Aboriginal Elders.

Partnerships

Strong partnerships will be required to support the success of Aboriginal learners and workforce entrants. Parents, community, all levels of government, including Aboriginal governments, and other educational stakeholders must collaborate to reverse the current trends, reduce barriers, and achieve mutual goals.

- Develop stronger partnerships between Manitoba Education and Training and Manitoba Justice.
- Develop, in partnership with Aboriginal communities, various levels of government, and other stakeholders, appropriate structures for joint planning and/or program delivery.
- Enhance intergovernmental coordination to ensure a holistic approach and cross-department linkages with education, training, and employment initiatives.
- Support new and existing alternative justice models; for example Aboriginal Ganootamaage Justice Services of Winnipeg; Community Holistic Circle Healing Program at Hollow Water, and Under a Northern Sky: Aboriginal Circle of Peacemaking and Justice.
- Collaborate with alternative bail supervision programs to develop long-term education and training plans for youth.
- Ensure that initiatives increase the awareness of the relationship among health, education, and employment.

Time has not permitted the Aboriginal Justice Implementation Commission to evaluate these recommendations in the detail they deserve, nor to consult with Manitobans on them. However, it would appear that these recommendations are consistent with the AJIC's approaches and priorities, and are deserving of future consideration.

Specific Programs

A number of specific programs in other jurisdictions, brought to the attention of the AJIC, have the potential to reduce the involvement of young people in crime.

The Outdoor Classroom Program

To make school more relevant to the lives of Aboriginal children, the National Crime Prevention Centre provided funding to the Gwich'in Tribal Council in the Northwest Territories to establish the Outdoor Classroom program. The project targets Aboriginal youth aged 6-12 from northern, remote, high-needs communities, who face multiple risk factors.

The program has four components:

- an Outdoor Classroom that uses an alternative teaching environment to combine academics, traditional activities, and effective crime prevention strategies
- an Orientation Program for teachers, parents, and other resource people on the integration of crime prevention strategies at home, in the school, and in the community
- social skill development for children aged 6-12 to identify pre-offending behaviours, and appropriate early-intervention strategies
- an integration of crime prevention interventions for children and their families into existing community programming

Multisystemic Therapy (MST)

As the name suggests, this treatment program, which focusses on high-risk youth, recognizes that young people live within a set of interrelated systems. These treatment programs do not focus on the young person's assessed weaknesses, but help them develop the skills to address the systems in which they are living. According to Linden:

> The ultimate goal of MST is to "empower the family to take responsibility for making and maintaining gains.... parents are encouraged to develop the requisite skills to solve their own problems rather than rely on professionals" (Leschied and Cunningham, 2001: 9). Experimental evaluations of MST intervention including a program in London, Ontario (Leschied and Cunningham, 2001) have shown reduced rates of criminality, institutionalization, and drug abuse. The program has involved families in the treatment process and has improved family functioning and cohesion. Positive results have also been obtained for a similar program called

> Functional Family Therapy that also includes a variety of interventions with youth and their families (Surgeon General, 2001). (Linden, page 11)

Tu Tangata

Tu Tangata is a program that was developed in 1995 at Parkway College, in Wainuiomata, New Zealand. It was started by people in the local community in an effort to improve the school and career achievement of the largely Maori student population at the school.

The program places an educational support worker in each classroom. These workers do not develop or deliver the school curriculum. Instead, their tasks include:

- supporting the student
- supporting the teacher
- monitoring student progress
- encouraging parent participation in class or at home
- promoting education in all aspects of personal student health and social behaviour

The education support workers are members of the local community who have a variety of educational and life experiences. They work for the community, not the school division, and their role is intended to introduce the student to the classroom. The workers take the lessons along with the students and monitor how well each of the students is learning, assess and monitor student understanding and performance, and assist students who are having difficulties. The program has been adopted by other schools in New Zealand and Hawaii, and has had the effect of reducing crime and enhancing educational achievement.

Employment Programs

Many programs have been developed to help young people become prepared for employment. Traditionally, they include:

- work assessment and skills testing
- practical life skills
- job readiness training
- vocational and support counselling
- placement into employment or skills training

An example of such a training program targetted toward Aboriginal youth is the Bent Arrow program, which is operating in Edmonton. A 16-week program for First Nations people between the ages of 16 and 24, it is designed to develop the skills and knowledge necessary to make and maintain positive lifestyle changes. Participants can receive a training allowance.

Recreation

Recreation programs are an important element of a healthy, functioning community. However, research indicates that such programs have only a limited impact in reducing crime. As with other crime prevention programs, it appears that to be effective, such programming must be intensive.

In Manitoba, two programs have been linked with decreases in crime rates. The Northern Manitoba Recreation Director program trained community recreation directors who provided programs on a year-round basis, while completing training modules to further develop their leadership and training skills. The summer fly-in sports camps run by University of Manitoba physical education students on reserves in northern Manitoba was linked with significant declines in crime rates, compared with reserves that did not have the programs. This program involved very intensive recreation activities that were run over an entire summer. The information provided to this Commission indicates that this program is no longer in operation. The Aboriginal Justice Implementation Commission encourages the Manitoba government to take steps to see if a program of this nature can be revived.

Recreation and the Department of Culture

During the course of its deliberations the AJIC consulted with the Manitoba Department of Culture, Heritage and Tourism which has responsibility for recreation programming in the province of Manitoba. The department identified that there was:

- a lack of trained recreation leadership in the north
- a lack of recreation training available in the north
- a lack of professional development opportunities for those recreation officials in the north
- a lack of recreation facilities in the north
- a lack of resources to maintain recreation facilities in the north
- a lack of coordination between departments that support and fund recreation activities in the north

- a lack of understanding of the long-term value of community recreation programs
- a lack of Aboriginal participation in mainstream recreation, sport, or physical activity opportunities in the City of Winnipeg

The AJIC was informed by Culture that Aboriginal communities lack access to the resources necessary to provide quality recreation programs. Two of the problems the department identified were the lack of recreation directors in communities, and the limited attention that local political leaders could devote to the issue.

The department also noted the potential danger that recreational activities would be limited to competitive sports, commenting that it was important to support community arts, culture, and social activities.

The Department of Culture also pointed to three positive developments:

- The Manitoba Aboriginal Sport and Recreation Council. According to the Department of Culture, the council's work would benefit from additional financial and resource support. Such support would enhance the delivery of services that support the community recreation directors and other local leaders in developing grass-roots recreation and sport programs for residents of all ages.
- The City of Winnipeg and the Manitoba Aboriginal Sport and Recreation Council (MASRC). This organization developed the Winnipeg Aboriginal Sport Achievement Centre (WASAC), which has the objective of providing an entry level into the mainstream sport- and recreation-delivery system for Aboriginal people in Winnipeg.
- Manitoba sent a team to the North American Indigenous Games (NAIG) in 1997 and will be hosting NAIG in Winnipeg in 2002. These games provide an opportunity for meaningful participation by Aboriginal people. Annual funding is needed to assist in the development of Aboriginal sport opportunities leading to the development of a Team Manitoba Program.

The Department of Culture, Heritage and Tourism proposed the following recommendations to the AJIC:

Training

- A program be developed to fund First Nations and Northern Affairs communities to hire qualified and trained, full-time, part-time, or share recreation directors to implement recreation, sport, and physical activity opportunities. The salary paid to these individuals should be at a level similar to other community workers in that locale. Fifty-five Northern Affairs and First Nations communities are without paid recreation leadership. A modest program to address needs could cost approximately $10,000 per community, as they develop the capacity to participate.

- The Manitoba government provide additional funding to allow the departments of Culture, Heritage and Tourism, and Aboriginal and Northern Affairs to enhance the amount of training currently available for recreation directors in remote communities. Additional funds could also increase access to training provided through the Northern Manitoba Recreation Association, Recreation Connections Manitoba, Inc., and others.
- The Manitoba government develop training and mentorship programs that employ, train, and support young people in providing recreation programs.
- Keewatin Community College be asked to conduct a needs assessment process with key stakeholders to determine their role in training recreation personnel for Aboriginal communities.

Institutions

- The Manitoba Aboriginal Sport and Recreation Council and the Winnipeg Aboriginal Sport Achievement Centre be funded on an ongoing basis by the Government of Manitoba.
- Funding be provided for initiatives, including the Manitoba Indigenous Games (winter and summer), sport-specific training camps throughout Manitoba for the development of elite Aboriginal athletes, and special development programs, to develop a body of certified Aboriginal coaches and officials.

Participation

- An intersectoral committee, co-chaired by Northern and Aboriginal Affairs, and Culture, Heritage and Tourism, be struck to identify priorities and to develop a coordinated plan for recreation, sport, and physical activity programs and services specifically geared to the Aboriginal community. It is recommended that the committee be comprised of representatives from all three levels of government plus various provincial departments and agencies with an interest in the Aboriginal community.

- The level of participation by Aboriginal students in college and university athletic programs be assessed, that support programs be designed to increase participation by Aboriginal athletes in this setting.
- Funds be made available to develop and deliver education programs on the benefits of recreation, sport, and physical activity to Aboriginal communities throughout Manitoba.

Facilities

- Special measures be taken to increase access of facility operators in Northern Affairs and First Nations communities to courses in the operation and maintenance of recreation facilities.
- A pool of funds be made available for Northern Affairs and First Nations communities to development recreation facilities in concert with available grant programs such as Manitoba Community Places, Manitoba Community Services Council, and the Canada-Manitoba Infrastructure Program. The funds should be made available to the most needy communities first.

Time has not permitted the Aboriginal Justice Implementation Commission to evaluate these recommendations in the detail they deserve, nor to consult with Manitobans on them. However, it would appear that these recommendations are consistent with the AJIC's approaches and priorities and are deserving of future consideration.

Chapter Twelve

Strengthening Communities

Families and young people live in communities. There is a limit to what can be done to strengthen families or young people if the local community is plagued with poverty and unemployment. Healthy families need a level of income that provides decent housing, nutritious food, and positive orientation to the future. The work that schools do for young people will be undermined if children return home to substandard housing, and if they know there is no economic future for them in their communities. In previous chapters, recommendations have been made for early interventions in the lives of children who are at risk. These must be complemented with support for communities that are at risk. It should be remembered that while the children who participated in the Perry Pre-School Program did have far fewer encounters with the law than those children from their community who did not, these children did have many more encounters with the law than a similar number of children from a higher socio-economic status would experience. (Seven percent were arrested or detained five times or more, and 59 percent received social service benefits.)

While the interrelations are subtle and complex, it is apparent that social and economic factors have a profound impact on the rate at which young people come into conflict with the criminal justice system. Communities marked by inequality, extreme poverty, and social exclusion have problems with violence and crime. Extreme poverty has been linked with:

- inhibited cognitive development in children
- child abuse and neglect
- multiple stresses that undermine parents' ability to raise children in a caring and effective manner

Even though increases and decreases in employment rates do not always translate into increases in the crime rates, labour market issues are of extreme importance in this regard. Young people who have engaged in delinquent behaviour during their early adolescence often have difficulty finding and retaining employment. Furthermore, the employment they are likely to qualify for is usually low-paying and lacking in opportunity for advancement.

The presence or lack of career prospects, long-term employment stability, and an economic future for a community and community members shapes community health in a variety of ways. Stable employment is one of the roads along which people travel from adolescence to adulthood. High levels of unemployment block that road and make crime and a criminal career more appealing. Chronic unemployment makes people less suitable and attractive for marriage, thereby increasing the number of single-parent families. The stress of chronic unemployment can have a serious and negative impact on a parent's emotional behaviour.

Poverty is the single most significant condition connected to child abuse. Parents in all socio-economic classes abuse children, but abuse is far more prevalent among poor families (Gil; Giovannoni and Billingsley; Pelton). Two U.S. surveys of family violence concluded that violence toward children, especially severe violence, is more likely to occur in households with annual incomes below the poverty line (Gelles). Canadian studies show that 58 percent of the children taken into custody by child welfare authorities were from families on social assistance (Armitage).

Unemployment can also lead to increases in child neglect and abuse. According to the *Discussion Paper on the Health Impact of Unemployment*, prepared for the Canadian Public Health Association in 1996:

> An association between parental unemployment and risks of *child abuse* has been suggested at the aggregate level; for example, trends in reported cases of abuse or of children taken into state custody. Using US statistics of reported child abuse Gil (1969) found that nearly 50% of the fathers were unemployed, three times the national average. In Britain (1976), the unemployment rate among reported abusive fathers was estimated to be six times the national rate. (*Canadian Public Health Association*, page 10)

Most poor families do not abuse or neglect their children. However, poverty has consequences, and one of them is heightened levels of child abuse and neglect.

Goals

The AJIC supports public policies that work to achieve the following goals:

- income policies that ensure children grow up in families that can meet their developmental needs
- employment policies that provide meaningful work at wages that ensure children grow up in families that can meet their developmental needs

- policies that reduce social inequality.

Trends

There has been little progress made towards reducing poverty or increasing economic equality in Manitoba over the past decade. Indeed, at the macro level, most of the developments have been decidedly negative. This is reflected in an analysis of the 1996 census statistics for the City of Winnipeg. It showed that in 1996

- More than one-half of all inner-city households had incomes below the poverty line.
- More than two-thirds of single-parent households in the inner city had incomes below the poverty line.
- Four-fifths of Aboriginal households in the inner city had incomes below the poverty line (Lezubski, et al).

It is clear that poverty no longer moves in lockstep with the business cycle. Where, in the past, poverty rates rose during recessions and declined during recoveries, during Canada's last economic recovery, Canada's poverty rate increased, reaching 17.2 percent in 1997, one point lower than it had been at the height of the recession of the 1980s. Results of this nature are linked to a set of broad provincial, national, and international trends.

Labour Market Deregulation

- Unemployment insurance is now much harder to qualify for, pays a lower benefit, and lasts for a shorter period of time than in the 1970s.
- Manitoba's minimum wage was one of the highest in the country in the 1980s. By the end of the century, it was one of the lowest.
- The elimination of the Canada Assistance Plan and the introduction of the Canadian Health and Social Transfer (coupled with overall reductions in federal transfers) led to reductions in welfare payments across Canada (Silver).

Macro-Economic Factors

- During the 1990s, the federal government maintained high levels of unemployment to reduce inflation.
- There has been a disinvestment in the public sector (particularly in health and education) as a part of the drive to reduce public deficits.

- There has been a dramatic growth in part-time work and low-wage jobs.

While Manitoba currently enjoys a very low unemployment rate, that rate remains unconscionably high for Aboriginal communities. Secondly, changes in the job market have created a situation where employment no longer offers a guaranteed exit from a life of poverty.

The guiding economic policies of the past decade have been market-driven. The Manitoba and Canadian economies, which were always relatively open economies, have been opened even further. Increasingly, Manitobans consume goods created elsewhere in the world, and create goods and services that are meant for export—largely to the United States. Investment is often external and, as a result, profits from local economic activity leave the province. These policies stress the need for a flexible and competitive workforce. Such policies are often at odds with employment policies that aim to provide meaningful work at wages that allow children to grow up in families that can meet their developmental needs, or that reduce social inequality. (Social assistance policies, under a market-based approach, should never provide a higher level of income than a person could make while working at the lowest paying available job. Under this model, social assistance rates do not take the cost of living into consideration.) Furthermore, these policies discourage government policies that focus on fostering regional economic activity, whether the activity be in northern Manitoba or inner-city Winnipeg. The guiding belief is that individuals should be prepared to leave their home communities in search of economic opportunity. Furthermore, they should be prepared to lower their wage and job-security expectations in exchange for employment. Finally, economic policies are focussed on meeting export demands, not local market needs. As a result, housing, education, and health needs can remain unmet, even as provincial unemployment declines (Black and Silver).

Economic Development and Crime Prevention

Economic policy can play an important role, at both the macro and the micro levels, in reducing crime. Communities are supported by policies that:

- place a priority on job creation
- provide incomes at a level that allows families a decent standard of living
- encourage full-time over part-time jobs in the labour market
- provide childcare to allow women and men to participate in the labour market
- emphasize investment policies that address human need, not market demand

These policies would alleviate many of the negative impacts that accrue from previous economic policies. However, they need to be supplemented with additional measures. Full employment, living income policies will benefit all Manitobans. However, the employment and income needs of Aboriginal people are the most severe in the province, and require bold and targetted measures.

In Manitoba, a high number of Aboriginal people have migrated, and continue to migrate, to urban centres, especially Winnipeg, for better economic and social opportunities. Over 40 percent of all Aboriginal people in Manitoba live in Winnipeg and face a myriad of obstacles. A number of reports over the past decade have noted the unenviable fact that Winnipeg was the Canadian child poverty centre. A disproportionate number of those children were Aboriginal children.

Secondly, Aboriginal communities lack significant control over their economy. Money arrives as transfer payments and leaves in the form of payments for goods and services.

A crime prevention model for economic development would be a community economic model. It would operate on the basis of a number of important principles and would emphasize:

- use of local goods and services
- local production of goods and services
- reinvestment of profits locally (Along with the first two principles, this would create a convergent economy that prevents leakages and builds economic linkages.)
- creating long-term employment
- training of local residents for jobs that are being created
- local ownership and decision making

It should be noted that these principles stand in opposition to the principles of market-based development. These measures would contribute to community stability and economic development, and the principles have underpinned the work of Winnipeg Native Family Economic Development. The WFNED has served as the umbrella group for a number of community initiatives including Neechi Foods, the Payuk Inter-Tribal Co-op and the Niigaanaki Day Care. Taken together, these three enterprises address job creation, local consumption and investment, housing, early childhood education, and the provision of childcare to allow adults to participate in the labour market.

These, and other enterprises both in Winnipeg and in rural Aboriginal communities, demonstrate the possibility that community economic development holds (Winnipeg Native Family Development Inc.).

It should be noted that such a development approach need not be restricted to the City of Winnipeg. In the 1970s, the Manitoba government developed a community-based plan for northern Manitoba in response to historical approaches to the North. The historical approach operated on the following conceptions of the North's place in the Manitoba economy:

- It would be a source of resources that would be extracted and exploited for the benefit of people living outside the North.
- It was a hinterland whose Aboriginal residents were marginal to economic development.
- The state would play a key role in developing large-scale economic development in the region.

The North was developed as an export economy that imported most of the goods required for production. As the twentieth century progressed, the emphasis on large-scale development continued. There was also a growing belief that resources that were not consumed were wasted, leading the 1963 Manitoba government's Committee on Manitoba's Economic Future (COMEF) to write "The power resources of northern Manitoba are a good example of a resource whose potential economic value can be lost if left undeveloped too long. … The benefits to be reaped from the early development of what is now a wasting asset [in this case, northern forests] in northern Manitoba offer adequate justification for government intervention." (quoted in Loxley, in Lithman et al, page 59) At the same time, the COMEF concluded that "industrial concerns in [northern Manitoba] should not be expected to employ native labour which is not as productive as white labour. ... It is difficult enough to persuade large investors to put money in resource development in the north without expecting them to assume the added cost of solving the welfare problems of the native population." (quoted in Buckley, page 74) This attitude served to limit the number of mining jobs that Aboriginal people received.

In the 1970s, a second approach to northern development and Aboriginal participation in that development was conceived. This approach built on the Manitoba government's stay-option, a policy that sought to provide people with the economic opportunities to stay in their home communities. It targetted small-scale participatory developments that would keep the benefits of economic development—and jobs—in the north. The Northern Plan of the 1970s focussed on developing a local, northern housing industry, a food stuffs program, and transportation, education, and development programs. The costs of this development proposal were less than the capital outflows from the North and the reallocation of existing expenditures in the North. It was an approach that remains largely unrealized. The emphasis throughout the 1980s and 1990s on large-scale developments, such as mines, hydro dams, and forestry complexes, remained central to government economic development plans in the North. These approaches have brought numerous benefits to the Manitoba economy. They have not, however, succeeded in addressing the vulnerability and dependence of northern economies, nor were Aboriginal people able to exercise any control over these projects or receive a share of the surpluses they generated.

As noted at the outset, the link between crime and unemployment is complex. To achieve their greatest impact, economic policies designed to increase employment should be complemented with community-based economic development strategies that allow local communities to retain the maximum benefits of any such policies.

The Manitoba government can play an important role in supporting community economic development by:

- assisting Aboriginal organizations in developing planning, policy and advisory capacity in the area of community economic development
- assisting in the creation and development of Aboriginal-controlled community economic development capital corporations to operate throughout the province (A number of such corporations are already in existence but levels of capitalization remain low.)
- assisting groups that are providing education in community economic development
- investing in employment and training programs specifically targetted towards Aboriginal people
- expanding childcare services

There are numerous successful, community economic development models that have been employed in Canada and in Manitoba. A great deal can be learned from these models. However, it should be recognized that the specific nature of the issues in Aboriginal communities in Manitoba, particularly the lack of financial resources, means that development policies that have worked elsewhere may not be applicable.

Conclusion

A commitment to full employment, and to democratic and local control over investment, are of long-term importance to a crime prevention strategy. Key to this are concepts of public investment and community control. There are many, very real, unmet community needs in Aboriginal communities across Canada. Elsewhere in this report, the need for teachers, recreation workers, and child care workers has been identified. In addition, Aboriginal communities need improved housing, transportation, and food supply (to list only the most basic of human needs).

As noted at the outset to this section, the work of strengthening families and strengthening young people will require a commitment to working on the issues that affect communities as a whole.

Introduction to Section Five

Concluding Thoughts

The final section of this report looks to the future. It provides a series of revenue-sharing and funding options as mandated in the AJIC's terms of reference. Finally, it turns to the question of a successor institution to continue the implementation of the AJI and the recommendations made elsewhere in this report. The breadth of issues addressed by the AJI, the lack of progress in implementing AJI recommendations in the 1990s, and the need to allow communities to set the pace, all point to the need for an ongoing institutional commitment. In this section the AJIC recommends the establishment of both an Aboriginal Justice Commission and a Roundtable on Aboriginal Issues.

Chapter Thirteen

Revenue Generation

In its terms of reference, the Aboriginal Justice Implementation Commission was instructed to recommend "Practical, cost effective and attainable implementation and funding strategies for the activities recommended for priority action." (OC 459/1999)

The AJI had also addressed the issue of funding and made the following recommendations:

- As a matter of urgent importance, governments and Aboriginal people, with the assistance of the Aboriginal Justice Commission, negotiate an acceptable process to provide ongoing funding for Aboriginal governments to undertake the initiatives we suggest, in a manner consistent with:
- The need of Aboriginal people for an ongoing, consistent revenue base.
- The right of Aboriginal people, as original owners of the land, to a fair share of revenue resources from both levels of government.
- The greater access to the revenue-generating powers and sources available to federal and provincial governments.

Through extensive and close consultation with those who will be responsible for implementation, the Commission has sought to ensure that its recommended courses of action are practical, attainable, and cost-effective. In addition, the consulting firm, Fiscal Realities Economists, was commissioned to produce a research paper on means of financing Aboriginal programming. "Innovative Provincial Aboriginal Funding Programs" can be found on the Commission's website, and provides a survey of financing arrangements in other provinces, assesses those arrangements, and provides suggestions as to how the recommendations arising out of the Commission's report might be financed.

In general, the arrangements fall into a number of categories:

- arrangements whereby provincial sales tax is not collected on reserve purchases by non-Aboriginals, thus allowing First Nations either to impose their own tax, or to use the tax-free status as an economic development incentive

- revenue sharing from gambling activities
- programs requiring partners
- the creation of a fund, either with tax revenues or gambling revenues, that may be accessed for full or partial funding of Aboriginal programs

The report summarizes each of these approaches, and evaluates them in terms of their sustainability, accountability, and their political and economic impacts.

Tax Sharing Arrangements

The sharing of tax-raising room with First Nations, or dedicating provincial revenue room to specific Aboriginal programs, is a developing phenomenon. There are agreements in place currently in Quebec and New Brunswick. The Fiscal Realities paper suggested that such an approach can be helpful in resolving the uncertainty created by undefined treaty rights, resolving issues created by federal off-loading of responsibilities, and in reducing poverty in First Nations communities. The paper concludes that this approach scores well when assessed for sustainability, accountability, and political and economic impacts. However, the paper noted, that "To achieve economic development the relationship between the revenue source and improved economic activity or an improved investment climate must be clear. To ensure accountability and service delivery efficiency the relationship between the revenue source and the expenditures must also be transparent." (Fiscal Realities, page 14)

Gambling

This is a growing area of revenue sharing between provincial governments and Aboriginal organizations. There are ongoing discussions with First Nations in Manitoba regarding the establishment of First Nation casinos. It would appear to be sustainable, and politically acceptable since it involves sharing a growing revenue stream rather than redistributing an existing stream. The economic impacts of increased dependence on gambling revenue depend on the degree to which the gambling patrons are from out of province or from within the province. According to the Fiscal Realities report, "Gaming does not score as well with respect to accountability. In most provinces gaming revenue becomes general revenue and the line of accountability between revenues and expenditures is blurred." (Fiscal Realities, page 13)

Programs Requiring Partners

These are programs under which a provincial government makes a funding commitment to an Aboriginal organization with the stipulation that the money be matched by funding from another source, often the federal government. It arises in part from the provincial government position that the federal government has primary responsibility for Aboriginal people.

Aboriginal communities are not required to limit their search for partners to the federal government. As a result, this policy can result in the creation of links with other business and community organizations. These links may turn out to be of greater benefit than the original program investment itself. This may make the approach attractive to the public. However, the paper noted that "partnered arrangements blur accountability and do not create strong incentives for innovative service delivery. Secondly, these arrangements provide little stability and security since they depend on the continued mutual interests of two and sometimes three orders of government." (Fiscal Realities, page 15)

Perpetual Funds

In 1969 the Government of British Columbia established a $25 million First Citizens' Fund. The interest on the account can be used by the BC Minister of Aboriginal Affairs for "advancing and expanding the culture, education and economic opportunities and the position of persons of North American Aboriginal ancestry who are ordinarily resident in British Columbia." (Fiscal Realities, page 8) This is the only such fund in Canada. Once a significant investment has been made in such a fund, it is sustainable and flexible. However, it was noted that the size of the initial investment is substantial, while the relationship between such a fund and economic development in the province is relatively weak.

Options

The consultants presented two sets of options worthy of further consideration in the short-term.

- Explore tax and revenue sharing arrangements.
- Encourage the Government of Manitoba, the federal government, the private sector, and the Aboriginal governments and organizations to establish a perpetual trust find.

Explore tax and revenue sharing arrangements.

Four potential areas for revenue sharing are:

- consumption taxes collected on reserves
- revenue sharing from Crown corporations

- resource royalty revenue
- the sharing of broad tax room

Encourage the Government of Manitoba, the federal government, the private sector, and the Aboriginal governments and organizations to establish a perpetual trust find.

It was suggested that a portion of the revenues from First Nations gambling be used to establish a trust fund. The fund would be managed by a committee of Aboriginal appointees. As noted above, the recommendation is that the federal government and the private sector be encouraged to contribute to the fund.

The AJIC presents these recommendations, and the paper upon which they are based, as information and a contribution to future discussions over the subject matters identified in the AJI, namely:

- the need of Aboriginal people for an ongoing, consistent revenue base
- the right of Aboriginal people, as original owners of the land, to a fair share of revenue resources from both levels of government
- the greater access to the revenue-generating powers and sources available to federal and provincial governments

Chapter Fourteen

Strategies for Action

Introduction

This report is intended to contribute to the implementation of the recommendations of the AJI, taking into consideration the current circumstances and changes that have occurred since the AJI report was issued in 1991. Consideration has also been given to the approaches and recommendations of the Royal Commission on Aboriginal Peoples on the subject matters of the AJI report.

The Aboriginal Justice Implementation Commission has attempted to contribute to implementation in various ways. The AJIC has made specific recommendations on priority items after having identified those priorities in consultation with the government and Aboriginal people. Secondly, the Commission has provided the results of some research and analysis on major priority issues. Thirdly, it has provided ideas in the form of discussion papers to inform the debate that must continue on the issues in the AJI report.

As its mandate expires, the AJIC Commissioners wish to emphasize a few points. As indicated in the introductory chapter, the implementation of the AJI report can not happen without the effective participation of the federal government, and of Aboriginal peoples' representatives. On the latter point, the AJIC concurs with the exhortation of the RCAP that policy affecting the interests of Aboriginal peoples or communities should never be designed or implemented without the effective participation of the legitimate political representatives of these peoples or communities.

It is also apparent that the implementation of the AJI report will require a sustained political commitment from the government; the relative lack of action evident in the status reports provided from government departments illustrates that point. Implementation requires changes in the way the government is currently organized to design and implement Aboriginal policy. The government must have a sustained institutional capacity to implement the AJI, and that requires not only appropriate expenditures, but appropriate means of organization, coordination, and responsiveness to changing circumstances and Aboriginal input.

All these points were recognized by the AJI. The AJI report states, "We have found that the nature of government decision making in the past, where Aboriginal people and their interests were concerned, has been cumbersome and inappropriate." (AJI, Volume I, page 641) As long as Aboriginal policy making remains ad hoc in nature, it will fail to meet the needs of Aboriginal people and the people of Manitoba.

The Aboriginal Justice Implementation Commission recommends that:

14.1
The Government of Manitoba develop a comprehensive Aboriginal policy.

The AJI also emphasized in its concluding chapter the skepticism with which Aboriginal people generally view the prospects of reports being implemented. Chief Oscar Lathlin, as he then was, was reported as stating, "This is the biggest fear that we have of this Inquiry, that nothing will be done once the Inquiry is over." (AJI, Volume 1, page 640) The AJI report commented that "Aboriginal people are tired of being studied and are concerned that reports on Aboriginal issues have a history of being placed on a shelf to gather dust." (AJI, Volume 1, page 640)

The present government made a political commitment to implement the AJI recommendations by appointing this Commission, and progress has been made during the term of this Commission's mandate. If the skepticism of Aboriginal people, identified by the AJI, is to be countered, and Aboriginal policies made to matter within the operations of the government, this Commission believes it will be essential to design a strategy for action. In that regard, the AJIC can only endorse the approach of the AJI in its concluding chapter, "A Strategy for Action," and draw attention to the actions identified that must be undertaken by the provincial government. The AJI strategy was predicated upon the recognition that the participation of Aboriginal people, the federal government, the judiciary, and other parties is essential to the strategy. Given the limits of the AJIC mandate, the AJIC Commissioners conclude by endorsing the AJI principle that joint, cooperative, strategic action must be undertaken to properly implement the AJI report. The Commission also endorses the principles behind the substantive recommendations that have not been addressed as priority issues during the term of our mandate.

Throughout this report, the need for attention to strategic results, measurement of outcomes, collection and publication of data, and transparency in administration has been emphasized. The importance of this cannot be overstated. The government must tell the public what it is prepared to do, and what it hopes this will achieve, and provide the public with enough data to allow the public to determine whether these goals have been met.

The final issue to be addressed is the need for successor institutions. The AJIC has two specific recommendations to make in this area. The first is the creation of an Aboriginal Justice Commission; the second is the creation of a Roundtable on Aboriginal Issues.

An Aboriginal Justice Commission

To oversee the implementation of its recommendations, the Aboriginal Justice Inquiry recommended the creation of an Aboriginal Justice Commission.

The AJI recommendations on this issue read as follow:

- An Aboriginal Justice Commission of Manitoba be established by legislation and by appropriate processes of the Aboriginal people of Manitoba, with a board of directors made up of equal numbers of Aboriginal and government representatives, and an independent chairperson. The commission should be provided with all necessary staff and resources.
- The position of Aboriginal Justice Commissioner be established as the chief executive officer of the Aboriginal Justice Commission. The commissioner's tasks will include monitoring and assisting government implementation of the recommendations of this Inquiry.

The AJI believed the Commission should be established by the federal and provincial governments with the participation of the Aboriginal people of Manitoba. The Commission, which was seen as being key to the implementation process, would be mandated to:

- enter into discussions with Aboriginal people to determine their wishes with respect to the various recommendations
- recommend the form and method of the implementation of recommendations.
- monitor the implementation of the changes we suggest
- report to governments, Aboriginal people, and the general public on the progress of implementation
- assist in the establishment of Aboriginal justice systems
- take steps to establish an Aboriginal Justice College
- monitor the progress of affirmative action programs

- initiate discussions between Aboriginal people and governments to establish mechanisms to deal with Aboriginal self-government and the settlement of outstanding claims
- receive concerns and complaints of any nature from Aboriginal people, and forward them to the appropriate department or agency for attention, and monitor the results
- mediate Aboriginal concerns or complaints with governments or agencies
- become involved in any issue involving Aboriginal people
- advise government on Aboriginal concerns and recommend appropriate action
- propose legislation or legislative change

In its year and a half of operation, the AJIC has worked with the Manitoba government to implement a number of AJI recommendations and to outline the approach required for further implementation. However, the AJIC has concluded that the sort of Commission envisioned by the AJI is required to ensure continued progress in this area.

The Aboriginal Justice Implementation Commission recommends that:

14.2

The Government of Manitoba enter into discussion with the Government of Canada and Manitoba Aboriginal organizations with the goal of establishing an Aboriginal Justice Commission.

A Roundtable on Aboriginal Issues

Government Policy-Making Capacity

Heightened policy capacity in the area of Aboriginal issues must be developed throughout the provincial government, as opposed to simply Manitoba Justice. The decreased representation of Aboriginal people in Manitoba jails can only come about when Aboriginal people have the same general education level, health status, living standards, life expectancy, and educational achievements as non-Aboriginal people. The Manitoba government has a role to play in all these areas.

Dr. Paul Thomas was commissioned by the AJIC to review what steps might be taken to give Aboriginal issues a higher long-term profile with provincial government. (This report is available on the AJIC website.)

In his paper Thomas outlined three sets of concerns that lie behind his examination of the existing structures and processes for handling Aboriginal issues, and of possible, alternative future arrangements.

- ensuring that issues affecting Aboriginal peoples achieve prominence on the institutional agendas of governments in such decision-making forums/processes as Cabinet, Cabinet committees, legislative planning, the budgetary process, program planning and implementation, etc.
- ensuring the coordination and integration of policies, programs, and services affecting Aboriginal peoples, whether these activities are conducted by individual departments, more than one department, or by one or more non-departmental entities, such as Crown corporations and boards/commissions
- ensuring that the policies and programs of the main departments of the provincial government reflect an adequate understanding of the values, special circumstances, needs, and priorities of the diverse Aboriginal communities, and of the off-reserve Aboriginal population

The paper examines how the values of responsiveness and coordination have been incorporated into the traditional design of government departments, Aboriginal issues, and federalism, and recent policies and programs within Manitoba. The paper concludes with a series of institutional and procedural options that might improve the responsiveness and coordination of policy making and policy implementation within the Government of Manitoba. The benefits and drawbacks of each option are also discussed. The options are:

- A Cabinet committee on Aboriginal affairs could be created, chaired by the Minister of Aboriginal and Northern Affairs.
- The Native Affairs Secretariat could become a true central agency.
- The Aboriginal Affairs Secretariat could become part of the Federal-Provincial Relations Secretariat with the Executive Council of the Government of Manitoba.
- The Government of Manitoba could develop a "vision statement" of the future of government/Aboriginal relations.
- A coordinating committee of deputy ministers could be created, to be chaired by the Deputy Minister of Aboriginal and Northern Affairs.

- A standing committee for Aboriginal Affairs could be created in the Manitoba Legislature to ensure prominence for Aboriginal issues in political debate, and perhaps to promote coordination of policy and administrative actions.
- "Aboriginal Desks" could be established in the provincial departments having the most impact on Aboriginal peoples.
- Seamless service provision could be actively encouraged.

The AJIC conducted a very helpful and instructive informal discussion with senior government officials on the issues identified in Thomas's paper, and is pleased to acknowledge the able assistance and cooperation of Thomas and government officials in this endeavour. During discussion, one of the ideas that arose, and which seems to merit consideration for adoption in the short term by the government, is the concept of a Roundtable on Aboriginal issues.

A Roundtable on Aboriginal Issues

The rationale for the creation of a Roundtable on Aboriginal Issues involves several considerations. The public policy challenges involved with meeting the needs and demands of a growing Aboriginal population within Manitoba are exceedingly difficult, and promise to become even more so in the future. Several commentators with whom the AJIC consulted stated that they believed Aboriginal issues are the most significant issues facing the province of Manitoba. Formulating appropriate, sound, legitimate, and widely accepted policies will require new ways of thinking about Aboriginal issues, new ideas for programs, and innovative ways to deliver those programs.

There is currently a fragmented and episodic approach to the development of policy with regard to Aboriginal peoples. The fragmentation is found both within and among governments, and among Aboriginal peoples and their organizations. Approaches to policy development have tended to be *ad hoc* and incremental. An approach based on the use of periodic royal commissions, task forces, and project teams does not correspond with the fact that the policy and program challenges are continuous and recurrent. Governments do not have a monopoly on the relevant data and knowledge to formulate intelligent policies. Data on Aboriginal peoples and their socio-economic status is weak or non-existent. In the future, Aboriginal organizations will take more control over programs targetted at their populations, but their capacity to formulate sound policies will be limited by available funding, staffing, and organizational capacities.

The Roundtable is intended to provide a forum for the generation of new policy ideas. It would provide continuous attention to Aboriginal issues. It would bring together many of the stakeholders in the Aboriginal policy community—Aboriginal organizations, governments, and others—to promote the formulation of coherent, consistent, and sustainable policies and programs. Information sharing, consultation, and consensus building could take place at the Roundtable. The Roundtable could generate or contract for data and analysis on Aboriginal issues. Participants in the Roundtable will be encouraged to relate more to the evidence on the issues than to engage in political and jurisdictional battles. As with other institutional reforms, there are no guarantees that a joint Roundtable will work exactly as envisioned in theory.

Tasks undertaken by the Roundtable could include:

- establishing realistic goals for Aboriginal policy
- monitoring and reporting on progress towards meeting those goals
- auditing programs that target Aboriginal people

The structure of the Roundtable would contribute to whether it was a success as "a think tank" for policy ideas, and a forum for the exchange of information and opinion to serve as a basis of support for new policy directions. This is not the place to present a detailed blueprint for the Roundtable. Only some general principles and ideas will be presented.

The Roundtable's membership should include representatives from the leading Aboriginal organizations at the provincial level. It might also include community representatives from the business, labour, social, health and academic sectors. The chairperson of the Roundtable could be a distinguished Manitoban with a demonstrated interest in the field. Making the Roundtable so broadly representative reflects the multi-dimensional nature of the issues facing Aboriginal peoples. The drawbacks of the potentially large size of the Roundtable could be offset by making use of subcommittees to work on particular projects.

The Roundtable would be supported by an executive director and a small professional and administrative staff. The costs of its operations could be supported by government grants. The products of the Roundtable could include discussion papers, reports on performance indicators, strategy documents, and an annual report. While the Roundtable would not be a formal decision-making body, it could play a useful role in generating information and advice for governments and for Aboriginal organizations. The ongoing Roundtable process could support the emergence of a consensus among stakeholders, including the mainstream institutions of society and the public at large. The Roundtable could lessen duplication and stretch the scarce analytical resources.

The Aboriginal Justice Implementation Commission recommends that:

14.3

As part of a public commitment to implementing the Aboriginal Justice Inquiry recommendations, the Government of Manitoba work with Aboriginal organizations in Manitoba to establish a Roundtable on Aboriginal Issues.

This recommendation for an ongoing, joint organization that will endeavour to keep Aboriginal issues on the public agenda concludes the work of the AJIC. This report has, as mandated, examined and set priorities for those recommendations of the Aboriginal Justice Inquiry that apply to the jurisdiction of the Manitoba government. This is not the place to summarize the vast range of issues that have been addressed—the AJIC's recommendations are reprinted in full in Appendix I of this document. This Commission has had a different scope and mandate from that of the AJI. However, it has tried to honour the spirit of that report by stressing an approach to law and justice that gives a full recognition of Aboriginal rights within a provincial context. The injustices of the past can be overcome, reconciliation and healing are possible, and balance can be restored to our community. It is more than a matter of righting past wrongs or of improving the position of certain groups within society—it is a process that will benefit every member of Manitoba society.

Appendix I

AJIC recommendations

2.1
The Government of Manitoba place the issue of recognition and reconciliation policies and actions on the agenda of a new Roundtable on Aboriginal Issues, Aboriginal Justice Commission, or such other implementation institution that may be agreed upon between the Province and representatives of the Aboriginal peoples in Manitoba, including in particular the Assembly of Manitoba Chiefs and the Manitoba Metis Federation.

2.2
The Interpretation Act of Manitoba be amended to provide that all legislation be interpreted subject to Aboriginal and treaty rights.

2.3
The Government of Manitoba formally renounce its half interest in minerals within Indian reserves.

2.4
The Government of Manitoba place the issue of the establishment of an Aboriginal Justice System on the agenda of the Aboriginal Justice Commission or such other institution as may be set up to implement the recommendations of the Aboriginal Justice Inquiry.

3.1
The Government of Manitoba develop and adopt, with the full participation of the Manitoba Metis Federation, a comprehensive Métis policy on matters within its jurisdiction.

3.2
The Government of Manitoba cooperate with the federal government and other provinces, where appropriate, on the implementation of the Aboriginal Justice Inquiry and the RCAP recommendations.

3.3
Representatives of the Province enter forthwith into discussions with the MMF to begin the process of addressing matters within the jurisdiction of Manitoba that have been the subject of recommendations by the AJI and the RCAP.

4.1
Any future, major, natural resource developments not proceed, unless and until agreements or treaties are reached with the Aboriginal people and communities in the region, including the Manitoba Metis Federation and its locals and regions, who might be negatively affected by such projects, in order to respect their Aboriginal, treaty, or other rights in the territory concerned.

5.1
The Government of Manitoba commit to reducing the number of young people held in pretrial detention in Manitoba from one of the highest in Canada to at least the national average, and put in place the services to accomplish this.

5.2
As part of a demonstrated commitment to reducing the number of young people held in pretrial detention, the Department of Justice should, as often as possible, publish comparative statistics on its website. If statistics comparing Manitoba with other provinces are only available annually the department should publish its own statistics quarterly with comparative numbers annually.

5.3
The police consider alternatives to the laying of charges in all cases involving Aboriginal youth and, when appropriate, exercise their discretion to take no legal measure or to take measures other than laying a charge.

5.4
Police departments continue to designate youth specialists and provide specialized training to all officers involved in the administration of the Young Offenders Act.

5.5
When a youth court judge denies bail, the judge consider releasing the young offender into the custody of his or her parents, or another responsible person, as contemplated by section 7.1(1)(a) of the Young Offenders Act.

5.6
Aboriginal communities be provided with resources to develop bail supervision and other programs that will serve as alternatives to detention.

5.7
Young offenders be removed from their community only as a last resort and only when the youth poses a danger to some individual or to the community.

5.8
Child and family service agencies be directed to continue to provide services to youth clients charged with an offence.

5.9
Child welfare and youth justice services be better integrated and co-ordinated so that all their services are available to young people charged with offences.

5.10
The adequacy of administrative and financial resources provided to youth justice committees be assessed.

5.11
The provincial government establish Aboriginal focussed diversion and alternative measures programs which incorporate the following principles:

- Aboriginal culture must be integrated into the program. Diversion schemes which involve the use of Aboriginal elders, peacemakers and other aspects of Aboriginal culture appear to have the greatest potential for success. In the context of Manitoba's urban Aboriginal communities, the program decision-makers could be drawn from the Aboriginal community within the urban environment.
- Judges must allow the community to become involved in sentencing but they must retain ultimate responsibility for sentencing.
- The program should attempt to involve all those who have a direct interest in the case, including the victim and the community.
- Programs should be able to accept referrals at any stage of the criminal justice process. They should also be able to accept referrals from the community before any charges have been laid and, if possible, before the authorities become involved.
- The community's respect for the program is vital. This means that one primary goal of the program must be to seek reconciliation and the restoration of peace in the community.

5.12
The establishment of a range of innovative options that can be used by the decision-makers will be critical to the success of alternative measures programs based in Aboriginal communities. An appropriate plan for an Aboriginal youth might, for example, involve participation in an Aboriginal operated wilderness program, an education program, an employment training program, or a treatment program.

5.13
Aboriginal supervisors from the community must monitor the disposition. The community must see sanctions that originate from, and are enforced by, the community, and not some outside force.

5.14
These programs should be formally designated and recognized as Young Offenders Act programs so that their role has official recognition and official support.

5.15
The Aboriginal Court Worker Program provide a court worker wherever Youth Court sits.

5.16
The Department of Justice collect and publish monthly statistics showing the number of young people in custody who have been transported from their home community to another location, the reason for the movement, and the time the young person spent away from his or her community.

6.1
The Government of Manitoba, in consultation with Aboriginal communities, implement the recommendations of the *First Nations Justice Strategy Evaluation Report* to expand the strategy to all other MKO communities that wish to participate.

6.2
The Government of Manitoba review its policy on volunteers working in the justice system, in particular in remote communities, with a view to ensuring, at the least, that volunteers are not out-of-pocket for expenses.

6.3
The Government of Manitoba, in consultation with Aboriginal communities in southern Manitoba and the City of Winnipeg,

consider whether the First Nations Justice Strategy approach would be useful in the southern parts of the province.

6.4
The Government of Manitoba establish community justice initiatives that provide for community involvement, alternative measures, and culturally appropriate services where communities express an interest in developing such a program.
Such a program should include:

- The adoption by the Attorney General of an alternative measures policy that could provide guidance to Crown attorneys, police, and others on the types of cases eligible for alternative measures.
- A system to refer and to track referred cases and to ensure results are reported to the appropriate authorities.
- Ensuring that adequate community resources are catalogued and available to handle referred cases. Such resources may be alcohol or addiction counsellors; mediators; facilitators for various alternative approaches, such as conferencing, talking circles, healing circles, and reintegration circles; community justice workers or probation officers to supervise restitution, etc.

6.5
Service indicators be developed for each circuit court by the Department of Justice. These indicators might include some or all of the following:

- Number of matters on a docket
- Number of remands
- Number of remands per case
- Number of guilty pleas
- Number of trials
- Total time of sitting
- Average or median time from charge to trial for each court location

This data should be collected for each sitting of court in each location, and published on the department's website.

The department should indicate what it considers to be minimum service standards for Winnipeg and locations outside Winnipeg.

The department and the Judiciary should then commit to meeting these standards.

Where the standards cannot be met, the department should be required to explain why it is unable to meet the standards.

6.6
The Government of Manitoba, in consultation with the appropriate First Nation governments, work to establish circuit court sittings on the Sandy Bay, Peguis, Sagkeeng, and Little Saskatchewan First Nations, should these First Nations desire this. This option should be offered to other First Nations whose members constitute the majority of persons appearing in a circuit court held near, but not on, the particular First Nation. Implementing this option will require negotiating appropriate agreements to ensure acceptable and continuing service, and to address concepts of community participation.

6.7
The Government of Manitoba consult with Aboriginal organizations with a view to creating regional, Aboriginal-controlled probation services to serve Aboriginal communities.

6.8
The Government of Manitoba seek to increase significantly the number of Aboriginal probation officers so that probation services to Aboriginal offenders are delivered primarily by Aboriginal probation officers.

6.9
The Portage Correctional Institution be closed.

6.10
The Government of Manitoba establish a new correctional facility for women that provides them with adequate treatment, training, and cultural and spiritual supports, and provides the greatest possible number of opportunities for community integration.

7.1
The Government of Manitoba initiate a process involving all stakeholders (with Aboriginal representation that includes the Assembly of Manitoba Chiefs and the Manitoba Metis Federation) to review policing issues in Manitoba with a goal of a new Provincial Police Act within three years. The review should deal with, among other things,

- The role of the province in encouraging the adoption and delivery of effective community policing
- Whether current mechanisms to fund police services are equitable
- The role of the province in ensuring adequate and effective levels of policing
- Complaints and discipline mechanisms for alleged criminal and non-criminal conduct
- Establishing training and performance standards
- Crime prevention
- Victim services
- The role and responsibilities of bodies charged with providing general supervision of police
- The distribution of powers between municipal governments, police supervisory bodies, and the chief of police
- The role of the Royal Canadian Mounted Police as a provincial police force, and arrangements for provision of specialized services by the provincial police force to other forces, such as First Nation police forces and municipal forces, both RCMP and non-RCMP
- What, if any, legislative provisions are required to deal with Aboriginal police forces

7.2
The Government of Manitoba and Aboriginal communities adopt a process through which Aboriginal communities could choose the most appropriate type of police structure; such a process should include:

- A needs assessment
- Option assessment
- Monitoring and evaluation

7.3
The Government of Manitoba work with Dakota Ojibway Police Service (DOPS) to explore ways to improve the efforts of DOPS to provide a community-based police service.

7.4
The Government of Manitoba work with the Royal Canadian Mounted Police to determine whether the RCMP is sufficiently

responsive to community needs and concerns, and whether its degree of responsiveness can be improved.

8.1
The Government of Manitoba adopt, in consultation with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation, a five-year Aboriginal employment strategy. The government must make annual reports to the public on its progress in implementing this program.

The Commission believes the employment strategy should incorporate the following elements:

- **A commitment from both the political and administrative leadership to increasing the number of Aboriginal employees in accordance with the recommendations of the AJI. This commitment must spell out political and administrative accountability, and identify and detail the appropriate financial resources. There must be goals, a timeline, and responsibility for meeting the goals within the designated time frame.**
- **A review of current employment systems to identify barriers.**
- **An increase in Aboriginal human resource capacity within government departments. This should include the hiring of Aboriginal Human Resource Officers.**
- **Formal initiatives to improve Aboriginal recruitment, retention, and advancement. This would include, but not be limited to, outreach and preparatory training; restating occupational qualifications to provide recognition of those positions for which knowledge of Aboriginal languages and culture is a qualification; culturally sensitive marketing mechanisms to recruit applicants; and monitoring of program effectiveness.**
- **A review, improvement, and expansion of the Aboriginal Management Development program.**
- **Development mechanisms to ensure Aboriginal access to career-advancement and employee-support services.**
- **Establishment of a union-management partnership to identify, address, and eliminate employment barriers within government.**

8.2
The Government of Manitoba make a public commitment to appoint forthwith a significant number of Aboriginal people to the positions of Provincial Court judge, magistrate, hearing officer, referee, and master.

8.3
The Government of Manitoba appoint forthwith a significant number of Aboriginal people to the Board of Directors of Legal Aid Manitoba.

8.4
The Government of Manitoba adopt a policy requiring appropriate representation of Aboriginal people on all provincial boards, commissions, agencies, and other institutions.

8.5
The Government of Manitoba, through the Manitoba Department of Education and the Manitoba Department of Justice, work with the Manitoba Metis Federation and the Association of Manitoba Chiefs to establish an Aboriginal Justice Institute with an appropriate tripartite governance structure. The institute would use existing courses and would develop new culturally appropriate training programs to assist Aboriginal people to work in the current justice system and in evolving approaches such as community and restorative justice.

8.6
The Government of Manitoba solicit the views of the Manitoba Metis Federation and the Assembly of Manitoba Chiefs to ensure the appropriateness of spiritual and cultural programming in correctional institutions.

8.7
The Government of Manitoba continue at all levels of government to employ cross-cultural training programs and to conduct regular evaluations of the effectiveness of such training.

8.8
The Government of Manitoba adopt a policy that prefers Aboriginal people to deliver cross-cultural training programs.

9.1
The Department of Justice, in conjunction with representatives of the Assembly of Manitoba Chiefs, the Manitoba Metis Federation, Aboriginal women's organizations, and other interested groups, review whether increased Crown discretion, in appropriate

domestic violence cases, subject to appropriate guidelines, could be used to encourage counselling and other intervention programs. Any new approach should be carefully monitored and evaluated.

9.2
The Government of Manitoba support continued research and evaluation of domestic violence policies and programming, which includes analysis by ethnicity of accused and victims.

9.3
The Government of Manitoba expand availability of culturally appropriate Aboriginal treatment and support programs for family members involved in domestic violence cases.

9.4
Aboriginal leaders work with the Government of Canada and the Government of Manitoba to ensure that safe options for victims of domestic violence are available within communities.

9.5
The Department of Justice work with local authorities to seek options that, in domestic violence cases, would preserve the victim's safety but allow the accused to remain in the community while on bail.

9.6
The Government of Manitoba increase the number of Aboriginal persons employed by the Women's Advocacy Program so that advocacy services delivered to Aboriginal victims are delivered primarily by Aboriginal service providers.

9.7
The Department of Justice review recommendations made by Dr. Jane Ursel in her paper prepared for the Aboriginal Justice Implementation Commission regarding dual charging to determine if they would assist in dealing with the question of dual arrests.

9.8
The Government of Manitoba investigate whether there is an appropriate Aboriginal agency now providing a range of family violence programming, and, if so, whether the development of a 24-hour response capacity, available to men and women, in this agency would be effective in dealing with family violence issues.

9.9
The Government of Manitoba monitor the Winnipeg Police Services Early Intervention Pilot Project and consider the expansion of the program, should an evaluation so warrant.

9.10
The departments of Justice, and Family Services and Housing, together with the appropriate child welfare agencies review, and report publicly on the status of implementation of the recommendations of the report, *A New Justice for Indian Children.*

10.1
The Government of Manitoba seek to enter into agreement with the Assembly of Manitoba Chiefs and the Manitoba Metis Federation to develop a plan that would result in First Nations and Métis communities developing and delivering Aboriginal child welfare services.

14.1
The Government of Manitoba develop a comprehensive Aboriginal policy.

14.2
The Government of Manitoba enter into discussion with the Government of Canada and Manitoba Aboriginal organizations with the goal of establishing an Aboriginal Justice Commission.

14.3
As part of a public commitment to implementing the Aboriginal Justice Inquiry recommendations, the Government of Manitoba work with Aboriginal organizations in Manitoba to establish a Roundtable on Aboriginal Issues.

Appendix II

Order in Council

No. 459 / 1999

On Matters of State

To the Honourable the Lieutenant Governor in Council
The undersigned, the Minister of Justice
Submits for approval of Council a report setting forth that:

WHEREAS

Subsections 4(1), (2), (4) and (6) of *The Department of Justice Act*, chapter J35 of the Continuing Consolidation of the Province of Manitoba, provide as follows:

> "4(1) The Lieutenant Governor in Council may, by order in council, appoint such committees as may be required
>
> (a) to inquire into, investigate, report, and advise on any matter referred to any such committee by the minister; and
>
> (b) to perform such other duties as may be prescribed by the Lieutenant Governor in Council.
>
> 4(2) A committee appointed under subsection (1) shall consist of such number of persons, each of whom shall hold office for such term, as the Lieutenant Governor in Council may prescribe in order.
>
> .....
>
> 4(4) A committee appointed under subsection (1) shall report to the minister within such period as he may direct, or may report to him periodically or from time to time as he may require.
>
> ....
>
> 4(6) From and out of the Consolidated Fund, with moneys authorized by an Act of the Legislature to be so paid and applied, the Minister of Finance, on the written requisition of the minister, may pay to persons appointed as members of any committee appointed under subsection

> (1) such sums as remuneration for their services, as may be fixed by order of the Lieutenant Governor in Council, together with the amount of such reasonable out-of-pocket expenses incurred by them in discharging their duties as may be approved by the Minister of Finance and certified by the minister."

AND WHEREAS the Aboriginal Justice Inquiry established in 1988 reported to government in 1991 on the state of conditions with respect to aboriginal people in the justice system in Manitoba and made recommendations for improvements to the justice system;

AND WHEREAS it is deemed expedient and advisable to establish an Aboriginal Justice Implementation Commission which shall be responsible for recommending priority areas for government action with respect to those areas for which the Manitoba government is accountable and responsible; recommending practical, cost-effective and attainable implementation and funding strategies for the activities for priority action within existing Canadian law; reporting on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry; and communicating and consulting with Manitobans in relation to the setting of priorities and development of implementation strategies;

AND WHEREAS Paul Chartrand and Wendy Whitecloud are respected members of the aboriginal community and are able to serve as Commissioners to fulfil the responsibilities assigned to the Aboriginal Justice Implementation Commission;

AND WHEREAS Eva McKay and Doris Young are respected members of the aboriginal community and are able to advise and assist the Commissioners as elder advisors;

AND WHEREAS it is deemed expedient and advisable to appoint the said Paul Chartrand and Wendy Whitecloud as Commissioners of the Aboriginal Justice Implementation Commission;

AND WHEREAS it is deemed expedient and advisable to appoint the said Eva McKay and Doris Young as elder advisors to the Aboriginal Justice Implementation Commission;

THEREFORE he, the Minister of Justice, recommends

1. THAT the Aboriginal Justice Implementation Commission be established.

2. THAT Paul Chartrand and Wendy Whitecloud be appointed as Commissioners of the Aboriginal Justice Implementation Commission and each be paid $500.00 per day for each day served as a Commissioner.

3. THAT Eva McKay and Doris Young be appointed as elder advisors to the Aboriginal Justice Implementation Commission and each be paid an honorarium of $1000.00 per month.

4. THAT the Commissioners provide status reports and implementation recommendations to the Minister of Justice and Minister of Aboriginal and Northern Affairs on a quarterly basis and a final report by March 31, 2001.

5. THAT such appointments be effective on, from and after the 29th day of November, 1999.

Terms of Reference

Aboriginal Justice Implementation Commission
November 1999

The *Aboriginal Justice Implementation Commission* is established to review the recommendations of the *Report of the Aboriginal Justice Inquiry (1991)* and to advise the government on the recommended methods of implementing those recommendations for which the Province of Manitoba is responsible and accountable. The Commission is responsible for:

1. Recommending priority areas for action to be undertaken by Manitoba, agencies under Manitoba's jurisdiction or those organizations funded by it in the short term, and sequentially in the longer term.

2. Recommending practical, cost-effective and attainable implementation and funding strategies for the activities recommended for priority action.

3. Supporting the principles set out in the Aboriginal Justice Inquiry within a justice system that is flexible and can be administered at the local level, and which operates under the current criminal laws of Manitoba and Canada.

4. Reporting to government on the current status of implementation of the recommendations of the Aboriginal Justice Inquiry with respect to those areas for which the Manitoba Government is accountable and responsible.

5. Communicating and consulting with Manitobans for the purpose of setting priorities and developing implementation strategies for proposed changes to the justice system. However, given the extensive public input during the Aboriginal Justice Inquiry, formal public hearings are not contemplated or authorized as part of the work of this Implementation Commission.

6. Providing recommendations to the Ministers on specific issues as they are finalized.

7. Providing status reports and implementation recommendations to the Ministers on a quarterly basis, with a view to finalization by March 31, 2001.

8. Assessing the jurisdiction to undertake the work of the Commission having regard to the Framework Agreement entered into between Canada and First Nations and the Reports of the Royal Commission on Aboriginal Peoples.

Appendix III

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Appendix IV

AJIC Staff

Commissioners

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Wendy J. Whitecloud

Elders

Eva McKay

Doris Young

Commission staff

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Lori Sinclair, Analyst

Vanessa Everton, Administrative Assistant

Doug Smith, editorial assistant

Patricia Sanders, copy editor

Department of Aboriginal and Northern Affairs

Harvey Bostrom, Executive Director, Aboriginal Affairs (Acting in an Advisory Capacity)

Appendix V

Aboriginal Justice Implementation Commission Consultation Papers

Anokiiwin Employment Solutions, *Aboriginal Employment Strategy*, 2001

Russell Barsh, *Trust Responsibility and the Coordination of Aboriginal Issues in the United States: Potential Applications in Canada*, 2001

Fiscal Realities, *Innovative Provincial Aboriginal Funding Programs*, 2001

John Giokas, *Recognition, Reconciliation and Healing*, 2001

Government of Manitoba, Department of Education and Training, *Aboriginal Justice College*, 2001

Bob Groves, *Background Paper on Options for a Successor Body*, 2001

Paul Joffe, *The 1985 Quebec National Assembly Resolution on Aboriginal Rights: A Brief Commentary*, 2001

Rick Linden, Donald Clairmont and Chris Murphy, *Aboriginal Policing in Manitoba*, 2001

Rick Linden, *Crime Prevention in Aboriginal Communities*, 2001

The Métis Policy Sub-Committee, Aboriginal Justice Implementation Commission, *Toward a Métis Policy*, 2001

Paul Thomas, *Making Aboriginal Issues Matter in the Government of Manitoba*, 2000

Jane Ursel, *Report on Domestic Violence Policies and Their Impact on Aboriginal People*, 2001

Therese Lajeunesse and Associates Ltd., Therese Lajeunesse, *Final Report, Consultation with Aboriginal Peoples*, 2001.

These consultation papers are available at www.ajic.mb.ca/consult.html

Appendix VI

Parties Consulted by the AJIC

Government of Manitoba

Aboriginal and Northern Affairs
Minister Eric Robinson
Deputy Minister Oliver Boulette
Daneen Cook
Joe Morrisseau
Donna Stewart

Justice
Minister Gord Mackintosh
Deputy Minister Bruce A. MacFarlane, Q.C.
Assistant Deputy Minister Greg Graceffo
Assistant Deputy Minister Irene Hamilton
Associate Chief Judge Murray Sinclair (now Justice Sinclair)
Provincial Judge Cathy Everett
Carolyn Brock
Lionel Chartrand
Sandra DeLaronde
Louis Goulet
Marston Grindey
Gord Hannon
Mary Humphrey
Brad Janzen
Ron Klassen
Linda Lafontaine
Mike Paluk
Paul Peterson
Monica Ross
Art Shofley
Don Slough
Ben Thiessen
Margo Thomas
Jim Wolfe

Elders and Chaplains
Captain Al Bain
Marian Bruyere
Father Ray Buteau
Elder Gladys Cook

The Reverend Bruce Faurschou
The Reverend Hager Head
Valerie Hutt
Michael Jebb
Roy Kemp
Reverend Harold King
Stan Lapierre
Joseph Lintz
The Reverend Yoski Masaki
Kevin McCleod
Larry Monkman
Bernie Mullins
Ken Norkway
Brian Normand
The Reverend Bill Parrack
The Reverend Louis Pellissier
Father Bernie Pinet
Calvin Pompana
The Reverend Jake Schmidt
Norbert Tanner
Bob Wasicuna

Family Services and Housing
Minister Tim Sale
Deputy Minister Tannis Mindel
Assistant Deputy Minister Peter Dubienski
Richard Asselin
Marlene Bertrand
Leanne Boyd
Doris Mae Oulton
Jeff Polakoff
Jay Rogers
Rob Santos

Civil Service Commission
Commissioner Paul Hart (retired)
Commissioner Shirley Strutt
Rose Bear
Bernard Carriere
Louise Chippeway
Bob Pollock

Conservation
Minister Oscar Lathlin
Deputy Minister Norm Brandson
Assistant Deputy Minister Harvey Boyle
Assistant Deputy Minister Serge Scraefield
Andrew Carrier
Rod McKenzie

Merlin Shoesmith
Merrell Smith
Dave Watton

Education

Deputy Minister Dr. Ben Levin
Assistant Deputy Minister Pat Rowantree
Veronica Dyck
Bob Knight
Richard Perrault

Other Departments

Minister Becky Barrett – Labour
Thomas J. Farrell – Deputy Minister of Labour
Tom Carson – Deputy Minister of Culture, Heritage and Tourism
James Eldridge – Deputy Minister of Federal-Provincial Relations
Gerry Berezuk – Acting Deputy Minister of Government Services
Paul Vogt – Secretary to Cabinet for Policy
Alexandra Morton, Q.C. – Deputy Minister of Consumer and Corporate Affairs
Diane Gray – Assistant Deputy Minister of Federal-Provincial Relations
Heather MacKnight – Assistant Deputy Minister of Intergovernmental Affairs

Aboriginal Organizations

Assembly of Manitoba Chiefs

Grand Chief Rod Bushie
Grand Chief Dennis White Bird
Roger Carriere
Val Cook
Glen Connell
Missy Flett

Manitoba Metis Federation

President David Chartrand
Stephanie Courchene
Don Roulette

Manitoba Keewatinowi Okimakanak

Grand Chief Francis Flett
Vice Chief Sydney Garrioch
Chief Shirley Costell
Michael Anderson
Dora Beardy
Ken Bighetty
Elizabeth Bignell
Louisa Constant
Marlene Dumas
Leslie Easter
Pam Groening
Ken Kehler

Zelda Kitchekeesick
Stan Manoakeesick
Greg McIvor
Roy Smith
Ashmede Asgarali – Keewatin Tribal Council

Southern Chiefs Organization
Grand Chief Bill Traverse
Grand Chief Margaret Swan

Aboriginal Council of Winnipeg
Wayne Helgason
Damon Johnson
Patrick Larocque

Aboriginal Sport and Recreation Council
Darryl Bruce
Ron Chartrand
Gary Houle
Stewart Sabiston

Dakota Ojibway Tribal Council
Jason Daniels
Robert Daniels
Tim Daniels
Fred Eastman
Gwen Lafreniere
Don McIvor
Gerald Sandy
Verna Hunter
Norman Lacquette
Reg Meade

Manitoba Association of Friendship Centres
Gail Cullen
Marshall Diggle
Joe Everett
Bill Ghostkeeper
Nelson Mayer
Garry McLean
Garda Sinclair-Moran

Native Women's Transition Centre
Florence Bruyere
Elaine Hawkins
Josie Hill
Nelson Mayer
Marilyn McGillivary
Isobel Monkman

Oxford House Justice Committee
Diane Bradburn
John Helbel- RCMP
Lydia Rentree
David Sanderson

Roseau River First Nation
Terry Nelson

St. Theresa Point Youth Justice Committee
Terri Flett
Titus Harper
Tek Mason
Roger McDougall
Cameron Wood

Treaty Land Entitlement Incorporated
Chief John Thunder
Chris Henderson
Brad Regehr

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Aboriginal Justice Inquiry-Child Welfare Initiative Management Committee
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Richard Asselin
Marilyn Bennett
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Louisa Constant
Stephanie Courchene
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Jeff Cyr
Peter Dubienski
Patrick Falconer
Elsie Flett
Vice-Chief Sydney Garrioch
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Josie Hill
Colin Kinsella
Trudy Lavallee
Rosemary MacPherson
Sid Rogers
Walter Spence

Anokiiwin Employment Solutions
Elaine Cowan
Jay Cowan
Brian Hart

Elizabeth Fry Society
Debbie Blunderfield
Elizabeth Comack

Northern Association of Community Councils
President Sonny Klyne
Helgi Einarsson
Ken Ellison
Glen Flett

Royal Canadian Mounted Police
Assistant Commissioner Tom Egglestone
Staff Sergeant Gary White
Sergeant Joe Lafreniere
Corporal Sam Anderson
Auxiliary Constable Russ Gourluck

Winnipeg Police Services
Chief Jack Ewatski

Others
Pauline Big George
Dr. Barbara Daté
Steve Dearth
Colin Gillespie
Associate Chief Justice Alvin Hamilton (retired)
Thérèse Lajeunesse
Carol LaPrairie
Dr. Rick Linden
Barbara MacKay
Kathy Mallett – Ganootamaage program
Joe Pinterics – Awasis Agency of Northern Manitoba
Dr. Paul Thomas
Dr. Jane Ursel
Native Brotherhood Organization of Stony Mountain Institute

International

New Zealand
Donna Hall, Wellington
The Honourable Parekura Horomia, Minister of Maori Affairs, Wellington
Tekohu Douglas, Auckland
Patricia Sarr, Ministry of Justice
Whatarangi Winiata, Otaki

Australia
Carmel Macdonald, Queensland
Cheryl Saunders, Victoria
Participants at the Aboriginal and Torres Strait Islanders Commission Roundtable, Brisbane, Queensland, October 2000